owned equipment but to equipment operated either under term or trip leases as well?

A. That is right.

Q. Do you have in mind the percentage of the tonnage transported by your company which moves in vehicles either under term or trip leases?

A. Well, on the long-term lease, which we term the long-term lease, there is approximately 40 per cent of our tonnage transported. On the trip lease which is very small, I would say about 15 per cent.

Q. Is it true, then, that in the aggregate both as to term lease and trip lease that approximately 55 per cent of the tonnage moves in that type of vehicle?

[fol. 2285] A. That is right.

Q. And 45 per cent in company owned vehicles?

A. That is right.

Q. Have you familiarized yourself with the rules proposed by the Interstate Commerce Commission in these proceedings?

A. To a certain extent.

Q. Is it your understanding that under those rules the trip lease to which you have previously referred in your testimony will be prohibited?

A. Well, I don't know whether it will be prohibited but it would work a hardship on a lot of the carriers today who are depending on that type of service.

Q. Well, do you know whether the rules proposed by the Commission do contemplate that carriers may not in the future, if the rule is adopted, engaged in the so-called trip leasing of vehicles?

A. That is right.

Q. All right. Will you tell the Examiner whether or not the rule as proposed has any objections from the standpoint of your own company operations?

A. Yes, it has.

Q. Will you tell us briefly what they are?

A. Well, our policy, of course, is a policy that was given to us years back under the ODT of pooling of equipment and joint action plans where pooling of equipment assisted [fol. 2286] in dispatching and expediting freight from certain territories where the preponderance of freight seems

to be moving in one direction and that practice and procedure has been continued on subsequent to the war.

Q. In your operations do you have any situations where the movement of traffic is out of balance?

A. Yes, definitely so.

Q. Will you illustrate those for us?

A. Well, you have seasonable merchandise and your preponderance of freight—the tendency is moving from the north to the south or from the east to the west.

Q. All right. Now, may we illustrate it this way? You mentioned that you have an operation between St. Louis and Kansas City. In what direction is the density of traffic on that route?

A. Westbound, to Kansas City.

Q. You mentioned also that you have an operation between St. Louis and Tulsa. In what direction is the density of traffic on that route?

A. Westbound, to Tulsa.

Q. Will you speak of your other operations in the same manner?

A. Well, it is definitely an unbalanced movement as far as the tonnage is concerned due to seasonable merchandise——

Q. No, Mr. Burke. You mentioned a St. Louis-Louisville operation. In which direction is the density on that route?

A. From Louisville to St. Louis or Kansas City.

[fol. 2287] Q. St. Louis to Chicago, in what direction is the density?

A. The density is from Chicago to St. Louis.

Q. In all of the other directions is the unbalance present, that is, taking your St. Louis-Kansas City route; the unbalance is present in the movement from Kansas City to St. Louis.

A. That is correct.

Q. I see. All right, now, I interrupted you. Were you going to say something?

A. Well, I merely mentioned the fact that over certain months seasonable merchandise is offered to the carriers and it has to be handled with a certain amount of dispatch, expediency, and the carriers find themselves with the problem that there isn't sufficient direct line carriers that can

perform the service, for an illustration, direct line service from Louisville to Kansas City, and a lot of interchange of traffic and interchange of equipment develops because of the fact that the traffic from Louisville is so heavy, it puts the burden on the traffic moving from St. Louis to Kansas City with the available carriers who are in the business to transport that type of freight.

Q. Now, is the seasonable or so-called peak movement of traffic another reason that you are giving in addition to the unbalanced traffic as justifying your position for continuation of the trip lease?

[fol. 2288] A. Well, the seasonable business is one of the reasons and another reason is purely an operating reason as I have given before, the inability to get your equipment available because of a condition beyond our control.

Q. You are referring——

A. That is brought about due to some receivers of freight who are not properly equipped to accept the freight when it is tendered to them.

Q. I understood you gave that reason and you gave the unbalanced reason and now you also have the so-called peak or seasonable movement with respect to certain traffic that presents a problem as I understand.

A. That is right.

Q. Where the lease is employed, be it either trip lease or term lease, what method of compensation is employed?

A. Under our present contract, which is the 11-state area contract for drivers, the compensation is fixed predicated on the type of vehicle, that is the vehicle what is known as a tandem vehicle and a single-axle vehicle.

Q. May it briefly be said that the drivers' compensation, is that fixed in the union contract?

A. That is right.

Q. All right. Now, with respect to the rental or compensation for the use of the vehicle itself, what is that situation?

A. Well, that situation is based on a mileage and approxi-

[fol. 2289] mately 15 cents a mile is paid for the rental of the combined unit, that is the tractor and trailer. The driver's salary is separate and distinct over and above that amount.

Q. Now, Mr. Burke, have you enumerated all of the reasons which support your position as opposed to the elimination of trip leasing or do you have any further statement that you wish to make on that point?

A. Well, the only situation that I think is prevailing at the present time, that is a situation that we have to cope with, none of us know exactly where this preponderance of freight is going to come from and when it comes we have to be prepared to take care of it. As a common carrier we have to offer the service to the shippers, and make every effort to expedite the handling of their business, and there is occasions when freight will become congested due to the inability of carriers to supply adequate equipment at the time that the freight is offered to them which has caused a lot of complaints both from shippers and other carriers, because the trip lease, if done away with, would work a further hardship on these other carriers.

Q. Well, now, is the alternative, then, the provision by the carriers of a maximum fleet so that there might be sufficient equipment to transport the peak traffic if the trip lease is eliminated?

A. Well, I don't know how any company could anticipate a maximum fleet, assuming, of course, that we had at our [fol. 2290]. disposal sufficient equipment at all times. It is pretty hard to anticipate what your business is going to be. St. Louis is a big interchange point for carriers who terminate here at the border point and will bring in freight from the Atlantic Seaboard and turn it over to carriers handling this traffic going westbound. Naturally, we have no advance information that this traffic is going to be offered to us and you can readily visualize the condition it puts the carrier in when you have nine or ten interchange carriers bringing truckloads of freight to you to dispatch the same day besides your local work that you have to do.

Q. Are you familiar with the fact that Rule 3 as proposed by the Commission prohibits the interchange of equipment as between authorized carriers except as to trailers?

A. That is right.

Q. What is your view with respect to that rule and how will it affect your operations?

A. I believe this, from the mechanical standpoint it would have a further burden on the part of the carriers to perform an expedient service. In a number of cases carriers who will originate freight in a destination beyond a local carrier's termini will have equipment, that is, we will say air-brake equipment and the carrier who does not have air-brakes can't transport that trailer through to destination. With the leasing of the tractor to go on through to destina-
[fol. 2291] tion it will expedite that movement and take it on to destination.

Q. We are assuming for the moment that your company received at St. Louis a through trailer load of freight which had origin east of the Mississippi River, going to Kansas City, and you took the origin carrier's trailer as well as the origin carrier's tractor. With respect to the driver, how would that transaction be handled?

A. Well, we would either have one of our drivers drive the vehicle or employ the driver from the company who was leasing the equipment to us, put him on our payroll the same as one of our employees and he would then report to our Kansas City office for further instructions.

Q. Then is it true that you advocate the broadening of Rule 3 insofar as interchange of equipment between carriers is concerned and take the position that it should also include the leasing of tractors or power equipment?

A. That is right.

Q. And among the things that you mentioned, as I understand it, is that there may be a different type of braking power used on the trailer of the origin carrier than is the case with the tractor of the carrier that would take the shipment to ultimate destination?

A. That is right.

Q. Now, Mr. Burke, does that generally state the position of your company and the carriers for whom you speak
[fol. 2292] with respect to the proposed rules or do you have any further observation you wish to make for the benefit of the Commission?

A. No, I have no further observation; that seems to cover the extent of the leasing of equipment.

Mr. LaTourette: You may inquire.

Exam. Lawton: Are you ready to cross-examine?

Cross examination

By Mr. Eldred:

Q. Mr. Burke, on these vehicles that you lease on long terms, for instance, who pays for the gas and the maintenance, does the owner do that?

A. Yes, they provide the gas, repair work. Of course, we may do some of the repair work if it is found necessary under an emergency.

Q. Now, could you tell me, take for instance, your run from St. Louis to Kansas City. What proportion of the traffic is westbound?

A. What proportion of the traffic?

Q. Yes.

A. Percentage?

Q. Yes.

A. The inbound will represent approximately 60 percent of the outbound.

Mr. LaTourette: I think you had better illustrate that by taking a movement from St. Louis to Kansas City and Kansas City back to St. Louis so counsel can understand.

[fol. 2293] A. Well, I can give you—figuratively speaking I can give you these figures as an illustration. Let's assume we move a million pounds of freight in any one six work days a week to Kansas City.

By Mr. Eldred:

Q. From St. Louis?

A. Yes. We will have approximately 500,000 pounds in return or maybe 600,000 pounds in return.

Q. Take your run from St. Louis to Tulsa, what would that be?

A. That would be about, I would say in the neighborhood of 400,000 pounds versus a million.

Q. Now take the movement from Louisville to St. Louis?

A. That is a better balanced movement. It will run out of St. Louis about 600,000 to every million pounds that Louisville puts in here.

Q. Yes. Now take the run from St. Louis to Chicago.

A. That will run about 750,000 pounds for every million pounds that Chicago puts in here.

Q. Into St. Louis?

A. That is right.

Q. Take the run from Kansas City to Tulsa, how does that stack up?

A. Well, that is very spasmodic; the preponderance of the freight is about 400,000 pounds return for every million pounds going from Kansas City to Tulsa or to the Tulsa gateway.

Q. Has this been a general situation that has existed over [fol. 2294] a period of time, this proportion such as you have stated?

A. It has been a condition subsequent to the war.

Q. What was it prior to the war?

A. During the war it was pretty evenly balanced.

Q. Yes, and prior to the war was it more in balance than it is now?

A. No, prior to the war it was about on the same barometer as we are working today.

Q. Yes. Now, insofar as this inability to make deliveries on Saturday, that is something that has developed quite forcibly since the war, hasn't it?

A. That is right.

Q. And it looks as if it is going to be a permanent situation with us, doesn't it?

A. To a certain extent.

Q. I mean that is a difficulty we have got to meet in all forms of transportation?

A. That is right.

Q. As I understand, you are agreeable to having the drivers placed on the payroll, you want to put the driver of a vehicle on the payroll?

A. That is correct.

Q. And insofar as the other papers and records are concerned, you agree to that, as far as inspection of equipment, is that true?

[fol. 2295] A. That is right.

Q. And the—so I may get it concretely, what is it you particularly object to the rules in connection with the leasing of vehicles? I am not referring to the interchange of

equipment between authorized carriers, Mr. Burke, but leasing of equipment from other parties.

A. I don't know whether I follow you on that question. You mean what is my objections to leasing equipment from other common carriers?

Q. No. What is your objection to the proposed rules with reference to the leasing of equipment?

A. Oh, if the rule as contemplated, eliminate the one-trip operator, is that the question?

Q. Yes.

A. Well, my objection would be this: You will find some congestion. You will find some delays and it is a question of how fast can the present carriers cope with that situation, whether it would work a hardship on the shipping public or the receivers of freight.

Q. Now, take for instance, sir, could you give us an example, how many trip leases did you have to execute here the past week, would you know about that?

A. I would say in our company, speaking about our company, about probably three or four.

Q. And would you be able to estimate what the total [fol. 2296] number of trips were that your vehicles took in comparison to——

A. Our own company vehicles?

Q. Yes.

A. Well, our own company vehicles——

Q. And those that you have on a long-term lease. I mean combined as contrasting with the three trips that you made under a trip lease.

A. Well, I would assume this, and this is just an assumption, that we would have handled approximately 60 loads of freight.

Q. During the week?

A. Yes, sir.

Exam. Lawton: 60 full trailer loads?

A. That is right.

By Mr. Eldred:

Q. Now, Mr. Burke, I understand that you have approximately 50 units of your own, you have 50 trailers and how many tractors?

A. Well, there is a total of 57 trucks and tractors all told. We have 107 pieces of equipment.

Exam. Lawton: That is 57 complete units?

A. That is 57 tractors and trucks.

Exam. Lawton: The balance is trailers?

A. 50 trailers, that is right.

By Mr. Eldred:

Q. Could you break the tractors down between tractors and trucks, break them down as to how many trucks you have?

[fol. 2297] A. Well, the city trucks or pickup trucks, delivery trucks, however we use both types, we use the tractors for city work and we also use the tractors for road work and while some of the tractors are consigned principally for city work, they are not utilized on the highway, they are picking up loads in the city.

Q. The only thing I was trying to find out, as I understand you have 20, is that tractors and trailers on long-term lease?

A. 20 tractors on long-term lease.

Q. Then you would only make approximately 60 trips with that amount of equipment, leased equipment and your own equipment during the week?

A. You asked about this week and that's what I answered, this week.

Q. This week?

A. That is right.

Q. And you made three trip leases this week?

A. About that, yes, sir.

Q. So we get the comparable figure, that is all I wanted to be sure about.

A. That is all right.

Q. Taking then your business as a whole, it would not seriously interfere with your operations if trip leases were prohibited, would it?

A. Well, due to the extent what we are using them, only to the extent what we are using them it would affect the [fol. 2298] business. If we use 15 trip leases in a month I would lose 15 trip leases. That is how it would affect the business.

Exam. Lawton: You mean by that that you would lose 15 loads of traffic that would have to be turned over to some other carrier?

A. I don't know whether we would lose the 15 loads, it may be a question, we might lose the 15 loads and maybe a question that we could prevail upon those shippers if they would hold those loads. That is a question I can't answer. The situation today is one that whenever you get any freight it is always the hottest freight that you have got, you have got to move it.

By Mr. Eldred:

Q. Isn't that always the condition, usually?

A. Well, it seems to be that way.

Q. The figures that you have given, has this been approximately would you say an average week, sir?

A. No, we have our peaks and valleys, you know. This is not the heavy trend of traffic. December is never considered a heavy month as far as traffic is concerned. Of course, there is exceptions to that. During the war there was no month made any distinction.

Q. Do you always have available these operators, owner operators that you can employ on trip lease?

A. Do we always have them available?

Q. Yes.

A. Yes—I don't say yes and I don't say no because of [fol. 2299] the fact that sometimes these operators are available and sometimes they are not available.

Mr. LaTourette: You mean owner operators?

A. Owner operators, yes.

By Mr. Eldred:

Q. Now, would you say the supply of these owner operators has increased during the past year?

A. Well, that question I can't answer. I wouldn't have the figures.

Q. Well, I mean put it this way, then, have they been more readily available the past six months than they were prior to that time?

A. I can only answer that question in this way, that they are probably more available today than they were six months ago because of the business being retarded today in comparison with the business six months ago.

Q. I didn't get that, business being what?

A. The business today is not as heavy as it was six months ago.

Mr. Eldred: I see. I believe that is all, sir.

By Mr. Nisbet:

Q. Mr. Burke, with reference to the method of compensation employed in connection with the leasing both long and short term, is the same basis followed by the other carriers which you are testifying for today so far as you know?

A. Well, as far as I know I believe that is correct. In other words, wh t you are asking me is a question that we have two separate and distinct setups; one is a salary [fol: 2300] check and the other is a rental check; is that the question?

Q. No. My question goes only to the matter of compensation for the rental——

A. Well, no, I can't answer that question as far as the compensation for the rental because I think there is different operating conditions with different companies that probably has a different rate basis. There is no fixed rate basis.

Q. My question was, Mr. Burke, whether or not you had knowledge of the method of compensation or the basis of compensation for the rental paid by the other carriers whom you are testifying for today.

A. Well, the basis—I can give you this—is based on a mileage.

Q. All of the carriers pay compensation based on mileage basis?

A. That is right.

Q. Do you find that a satisfactory arrangement so far as your own company is concerned?

A. Yes.

Q. Does your company have occasion or do you engage in the practice of leasing equipment to shippers?

A. No.

Q. Have you formed any opinion for or against the proposed rules of the Commission in connection with that phase of this proceeding?

[fol. 2301] Exam. Lawton: Do any of the other carriers whom you represent so far as you know engage in the practice of leasing to shippers?

[fol. 2302] A. No, they don't. We are common carriers. I think there seems to be a little confusion as to what is a common carrier and what is the practice of private carriers and contract carriers. Now, as common carriers we do not lease equipment to shippers nor do we lease equipment to brokers or anybody else that has control of the movement of freight.

Mr. Eldred: You know that is done in certain sections of the country, do you know that?

A. No, sir, I don't know that it is being done.

Mr. Eldred: That practice is not being done in this area?

A. I can answer your question this way, that I do know that there is companies who specialize in leasing equipment, that that is their business, leasing equipment.

Q. No, I am referring——

A. And they lease equipment for local deliveries.

Exam. Lawton: Those are not carriers, are they?

A. They are not carriers.

Mr. Nisbet: That is all I have, Mr. Examiner.

By Mr. Lorton:

Q. Mr. Burke, you spoke of the congestion in your terminals or the fact that your equipment was congested over the weekends, I think you explained was one of the

main reasons for the necessity as far as you are concerned for trip leasing?

A. That is right.

Q. Is that not brought about by the fact that in effect as [fol. 2303] a common carrier you are providing a certain advantage to your shippers by warehousing their goods for them, the consignee's goods over the weekend because they won't or are not available for delivery?

A. No, sir.

Mr. LaTourette: Object——

A. I would like to answer that question, if you will let me.

Mr. LaTourette: I think, Mr. Examiner, that is highly objectionable. Here is a common carrier who is required to move the freight when it is tendered to him and when the freight arrives at destination he can't make delivery, he just can't make delivery. I don't want any attempt to be made here to indicate here is a carrier who is discriminating or violating any provision in the act. I don't think this is a forum for determining——

Mr. Lorton: I will withdraw the question.

Q. What proportion of the equipment, Mr. Burke, is offered to your firm for trip lease purposes and is inspected by you, is then rejected because of mechanical defects, making it unsuitable?

A. I would say about 25 per cent.

Q. Do you know what happens to that equipment after you reject it?

A. No, sir, I don't. It could be that the equipment would still be available and could be utilized for other types of service, but not for the type of service that we have.

[fol. 2304] Q. It might be utilized by other carriers who are not so strict in their mechanical inspections?

Mr. Lieberman: I object to that on the ground it is argumentative and based on a supposition which may or may not exist.

Exam. Lawton: Overruled. Can you answer that?

Mr. LaTourette: I think that question is objectionable on

the ground that obviously this witness could not be qualified on so general a matter as that.

Mr. Diehl: He has already said he doesn't know what happens to it after it leaves him.

Exam. Lawton: It might be assumed that it could be used, this man wouldn't know.

By Mr. Lorton:

Q. Have you known of any instances in which the equipment that you rejected for mechanical defects has been continued in use by other carriers?

A. No, I don't.

Q. As I understand it, one of the primary policies of your company is that the driver of the leased equipment be placed upon your payroll?

A. That is right, the driver is placed on the payroll.

Q. Is that brought about by the determination of the officers of your company that such a policy goes to strengthen the control over the movement?

A. That is right.

Q. Would it be possible to have the same degree of con- [fol. 2305] trol, Mr. Burke, without having the driver as an employee of your company?

A. Well, now, that I cannot answer. That is a question of how you police your drivers. That is a company policy. If a company has a driver who is operating on a long-term lease and has company drivers, naturally, they all have to be treated on the same basis.

Q. Your company has found it more advantageous in order to have the control of your operation that you desire to have the drivers on your own payroll?

A. That is right.

Q. And that gives you a greater degree of supervision and control?

A. That is right.

Q. You don't operate any other way?

A. No, sir.

Q. Now, you pay the people from whom you lease trucks on a mileage basis?

A. That is right.

Q. And I think the figure you gave was 15 cents a mile.

In what areas in your operation, Mr. Burke, is your leasing more prevalent?

A. Well, our leasing, as far as the one-trip operator is concerned?

Q. Yes.

A. Out of St. Louis to Chicago.

Q. That is where the movement is about 75 percent one [fol. 2306] way and a hundred percent the other?

A. That is right.

Q. In the areas where, for example, I think in one area you gave an illustration of a million pounds of freight one way and 600,000 pounds the other. Is this leasing arrangement you have for single-trip operators, does it contemplate payment for coming back?

A. We don't use any one-trip operators on that particular run that you are making reference to, and that is the St. Louis to Chicago—to Kansas City operation.

Q. If there is a million pounds of freight offered to your firm to go in one direction it requires a given number of pieces of equipment to carry it, does it not?

A. That is right.

Q. And if there is only 600,000 pounds of freight offered to your firm to return in the other direction it requires a lesser amount of equipment to haul that freight back?

A. That is right.

Q. Somebody has got to absorb that empty mileage?

A. We do.

Q. Your company does?

A. Yes, sir.

Q. You don't impose that upon the trip lease operator?

A. No, sir.

Q. You referred to some given period of time in which [fol. 2307] you said that the elimination of trip leases would cause your firm to either lose or delay the handling of 15 truckloads. Do you recall that statement?

A. I said we use approximately 15 one-trip trucks a month and if they were eliminated that no doubt we would lose the 15 loads or either defer the handling of the 15 loads.

Q. Have you any idea how many you would have the next day if you weren't able to handle them on a trip-lease basis the night before?

A. No, that is something that I couldn't answer. I don't think anybody can answer that.

Q. If this same situation were general all over the industry do you imagine the entire industry would lose a great, substantial portion of those 15 loads of freight?

A. I think it would affect the industry because of the fact you are a common carrier, you have to handle the freight when it is offered to you or defer the freight. That is the only thing you can do.

Q. Do you think it would move by some other method of common carriage of transportation?

A. Could be, could be. It might move by private carrier.

Q. The shipper might buy a truck of his own?

A. Could be, yes.

Q. Or he might ship it by rail?

A. Yes.

[fol. 2308] Q. Or the shipper might rent a truck of his own?

Mr. Idol: Mr. Examiner, I think we have indulged in enough speculation.

Exam. Lawton: Yes. A lot of things might happen.

Mr. Lorton: Thank you, Mr. Burke.

By Mr. Wheeler:

Q. Mr. Burke, why don't you impose the return deadheading on the trip-lease operator?

A. I didn't get that question.

Q. Why don't you impose the cost of the return deadheading on your trip-lease operator?

A. I didn't say that we paid for the return of the trip-lease operators. You must have misunderstood that question.

Q. Well, is it now your statement that you do not?

A. We do, we have term leases and with the term lease on the deadheading we pay for. The trip lease is a question of a man getting a trip lease to Chicago, he at that point has his own arrangement for the load either from Chicago or beyond Chicago.

Q. In other words, your responsibility to him ends at Chicago?

A. That is right.

Mr. LaTourette: As to the trip lease?

A. As to the trip lease.

Exam. Lawton: Your term-lease operator gets paid for empty as well as loaded vehicles?

A. That is right.

By Mr. Wheeler:

Q. Mr. Burke, in that same realm, if trip leasing were [fol. 2309] permitted as between authorized carriers and forbidden as between authorized carriers and an owner operator, would not an adjustment take place which would equalize the situation as between the industry or within the industry?

A. It might simplify—if your common carriers had such an arrangement of leasing equipment from common carriers to common carriers, it might simplify the condition.

Q. Wouldn't it in large measure eradicate the necessity for trip leasing?

A. I think it would.

Q. Trip leasing of owner operators?

A. I think it would.

Q. Is a trip lease operator made your employee?

A. Yes, he is.

Q. Why do you not employ trip leased vehicles of owner operators for all of your operation?

A. Well, obviously we have reasons from a point of service, control, insurance and other major items too numerous to mention.

Q. You don't believe that you could carry on a satisfactory operation unless you owned or leased on a long term a substantial preponderance of your equipment?

A. That is right.

Q. Do you compete with any carrier in this area who does trip lease the bulk of the equipment from which he conducts his operation?

A. Well, I can answer that question to a certain degree, yes.

[fol. 2310] Q. Does he have a competitive advantage cost-wise by reason of such operation as against your operation?

A. Well, I would say so, yes.

Exam. Lawton: How about servicewise?

A. Well, his service, of course, is somewhat impaired by the elimination of terminal facilities where the freight is reported to a terminal for city dispatch with city men in contract with the delivery direct.

Exam. Lawton: You provide terminals, as I understand?

A. Oh, yes.

Exam. Lawton: Maintain them, and so forth.

By Mr. Wheeler:

Q. Has that affected the normal rate structure in this area?

A. To some extent.

Q. I take it that it has depressed it?

A. That is right.

Q. Have you ever been requested to lease equipment to a shipper?

A. No.

Q. How do you contact a prospective owner-operator for a trip lease?

A. Well, as a rule the dispatcher who handles most of our in and outbound traffic as well as the dispatching of the vehicles and so on, will have either a call from some of the drivers who at one time either worked for us and have equipment or are available and we have had contacts with these individuals whom we happen to know.

[fol. 2311] Mr. Wheeler: I have no further questions.

Exam. Lawton: Mr. Diehl?

By Mr. Diehl:

Q. Mr. Burke, if your company was limited as to securing equipment on trip lease from other common carriers, I would like to have you answer this question: Isn't it likely that the carriers, and I assume you have competition from here to Tulsa?

A. Yes, sir.

Q. Isn't it likely that the peak which you mentioned

would occur to all the common carriers at about the same time?

A. That is correct.

Q. Would it not?

A. That is correct.

Q. Then when that occurs isn't your chance of securing equipment from another common carrier diminished by reason of the peak that he has at the same time you have?

A. That is right.

Q. Are you operating under the 11-state area labor agreement?

A. Yes, sir, we are.

Q. Does that have anything to do with the fact that all these drivers are on your payroll?

A. Well, it is in the contract and we are a party to the contract and we are living up to the contract.

Q. And it requires that these men be on your payroll?

[fol. 2312] A. That is right.

Mr. LaTourette: Well, the Commission's administrative rule has spoken on that question also, has it not?

A. That is right.

Mr. LaTourette: Has that had some influence on you also?

A. That is right.

By Mr. Diehl:

Q. Have you had any experience that would indicate to you that your safety record with respect to hours of service, driver's log have been impaired by your use of trip lease operators?

A. Not to my knowledge.

Q. Is your insurance premiums greatly increased by reason of the fact that you use trip lease operators?

Mr. Wheeler: Mr. Examiner, I object to that question unless the predicate for that question is made that he at any time did not use trip lease operators.

Mr. Diehl: I will withdraw the question.

Q. Do you know if your competition—whether or not your insurance premium is on a level comparable with the others in this area?

A. I am certain it is.

Q. Are there people with whom you compete in this area who do not use trip-lease operators?

A. Yes, there are people in this area who don't use trip-lease operators.

[fol. 2313] Q. Now, when your peak occurs, I take it except for the pressure for expedition on the part of your shippers and consignees you would like to spread the traffic over the week and use your own or long-term leased equipment?

A. Yes.

Q. Level it out if you could, would you not?

A. Gladly.

Q. So that you supplement your fleet when you in your sound business judgment believe it to be required to service properly your people, is that right?

A. That is right.

Mr. Todd: Objection, Mr. Examiner, I think the question is entirely too leading.

Exam. Lawton: He has already answered.

Mr. Todd: I move that the question and answer be stricken.

Exam. Lawton: Overruled.

Mr. Diehl: That is all.

By Mr. O'Brien:

Q. Mr. Burke, on these trip-lease vehicles, how are they identified?

A. They are identified with our permits. They are inspected. Our maintenance record will show that the equipment is inspected. Given identification signs on the tractors and on the trailers.

Q. Your name is on the trailers themselves?

A. That is right, that is right.

Q. Speaking of this emergency that occurs continually [fol. 2314] on weekends, if you were denied the use of trip leasing, how would that place you at a disadvantage to your competition?

A. Well, it is a problem, of course, of trying to have the equipment available when your shippers call and as a rule your shippers who have their freight assembled over the

weekend want to get it moving early Monday morning. We are trying to do two days work in one day with the freight that is congested at the terminal, it comes in principally straight loads, we do work the trailers with the l.t.l. freight and work our crew to load our city deliveries according to their territories that they serve in so that they are available to be on the street early Monday morning, but with the trailer loads which we find is not only prevailing with us but with other carriers, we find ourselves in the position that we may have one load for a receiver of freight and have five or six other carriers at the same platform waiting to unload when we get there, where freight has come from other directions or with other carriers. Naturally, that works a hardship on us and while those receivers of freight have no facilities to accept that freight on Saturday, the only thing we can do is try to arrange to supplement our fleet and take care of the business that is offered to us with trip-lease equipment.

Q. I appreciate that, Mr. Burke. I believe you didn't get the gist of my question. I asked how does that condition place you at a disadvantage with your competitors.

[fol. 2315] A. Well, I think my competitors have the same problem I do. We all have the same problem.

Q. As a matter of fact, the transportation industry as a whole has that problem, does it not?

A. That is right.

Mr. O'Brien: That is all.

Exam. Lawton: Anyone else?

Mr. Idol: I have a few questions.

Q. Mr. Burke, if leasing short term were prohibited could carriers provide the additional equipment they require to handle peak service by buying equipment?

A. Could the carriers?

Q. Yes.

A. Well, sir, I couldn't answer that question. I am assuming they could, I don't know. That is a financial matter that I can't answer.

Q. In your own particular case how much additional equipment would you have to buy for long-term lease to handle your peak business for this year?

A. Well, sir, anything that I might say at this time to take care of the peak business would be just a guess. I could assume that we could invest a hundred thousand dollars and still not have adequate equipment to take care of the demands.

Q. If you did purchase enough—let us say you increased [fol. 2316] your fleet by 25 percent, Mr. Burke. Would that take care of a substantial number of your peak carriers?

A. I think it would.

Q. Would it have any effect on your costs?

A. Well, naturally it would have some effect on our cost.

Q. What effect would that be?

A. Well, if you increase your investment you are naturally going to increase your cost from the standpoint of labor performed, the fact that the equipment would be available at times when we would have no freight for it and that is directly a cost today.

Q. Yes, sir. Then would it be a fair statement to say that the use of trip-lease equipment tends to keep your rates at a lower level than they would be if you were compelled to own or long-term lease all the equipment necessary?

A. Well, I can't speak about whether it will keep the rates at a low level. Our rates today are all prescribed——

Q. I mean a comparative level, Mr. Burke?

A. It would be on a comparative level.

Q. My question is whether the use of trip leases to handle peak periods tends to keep your costs below what they would be if you were compelled to own all the equipment required for your operation.

A. It only tends to keep our cost down from the standpoint of investment where the equipment would be deteriorating without the utilization of the equipment.

[fol. 2317] Q. Yes, sir. Wouldn't that difference be substantial if you had a 25 percent increase in your fleet?

A. Definitely so.

Q. I believe you say that you have two checks which are paid to your trip-lease operators, one covering his payroll and one covering the lease of the equipment.

A. That is right.

Q. If the money which you paid him were all in one check,

Mr. Burke, would that have of itself any effect on your control over the operation?

A. I think it would.

Q. In what respect?

A. Well, the fact that the man is placed on our payroll as a company driver gives us the right to dictate company policy and on a trip-lease we reserve that right at all times.

Q. Would you be able to impress that same control without simply going through the mechanical motions of putting them on the payroll?

A. There is other reasons that we have. This is an order, as I understand from the Commission to put the man on the payroll.

Q. Is that the reason, the principal reason which has called for that action?

A. Well, you have your withholding tax and you have your social security which is two good reasons.

Q. Do they have any effect on your control of the man? [fol. 2318] A. Well, I don't know what you mean.

Q. Well, my point is this: As I understand, there was some inference at least that the paying of a man by a separate check carried with it an element of operating control and I am unable to understand why it would.

A. Well, when a man is hired he is given the company instructions and he is dispatched to a given terminal and backed up with company drivers. In other words, there is company drivers on the run driving either alongside of him or behind him and following that through just the same as any other company employee.

Q. Yes, sir. What I am after is this. We had testimony from a witness this morning to the effect that he paid his trip-lease operators under a labor contract 75 percent of the revenue which the equipment earned. His testimony was further to the effect that he had good control over the drivers, the same control that he had over men who drove his own equipment, and the point that I want to find out, as I understand from your testimony there is some difference in the element of control which you exercise over him simply by virtue of paying him one salary check and one lease check.

A. That is right.

Q. I can't see why the consolidation of both of those amounts in one check and paying him a consolidated item would affect to any degree the control which you could exercise under your own company rule.

[fol. 2319] A. Well, to begin with, I am going to answer your question in this respect: We have a contract which is probably similar to the gentleman who testified why he pays on a percentage basis; we have a contract that compels us to pay on the mileage basis. In the contract there are certain conditions as well as company rules and regulations that we contend that we can enforce, if it is necessary for us to enforce it to have complete control over that one-trip operator.

Exam. Lawton: Are you speaking of your long-term lease operators?

A. No, just the one-trip operator.

By Mr. Idol:

Q. Would it be a fair statement, then, to say this, that your reasons for using two checks are first that they are required by your labor contract; second, your understanding that a Commission ruling requires it?

A. That is right.

Q. I believe you said that the use of a substantial amount of trip-lease equipment by particular operators have a tendency to depress the rate levels here. Have operating ratios generally been unsatisfactory, Mr. Burke?

A. Are you asking me for my own company?

Q. Yes, sir.

A. Or for the companies——

Q. For the companies for whom you are appearing.

[fol. 2320] A. We can't complain about the operating ratio this past year.

Mr. Idol: That is all I have, thank you, sir.

By Mr. Todd:

Q. Mr. Burke, I would like to get straight on one thing. Is it your testimony that during this week or during the past week that you have only used three trip-lease operators over your entire system or was that just out of St. Louis?

A. That was out of St. Louis. That is the only place we have them, out of St. Louis.

Q. You don't use any trip-lease equipment at any other point?

A. We do occasionally but we haven't had this week.

Q. Were those three trip-lease operators that you used, did you use them on Monday morning?

A. Used them Monday and Tuesday.

Q. And were they used for the purpose of taking care of this congestion that results by reason of the five-day week that we now have?

A. That is right.

Q. And where did they take their loads?

A. Louisville.

Q. Do you know what traffic they had available for them at Louisville to transport elsewhere?

A. At our terminal they had traffic for them to come back.

Q. And they brought a load back here to St. Louis?

A. I am assuming that they are coming back.

[fol. 2321] Q. I beg your pardon?

A. I am assuming they are coming back. They were out of here Monday and Tuesday.

Q. Is it a practice with you whenever you send a trip-lease operator out of that kind to have a load for them to come back?

A. Not all the time but in the majority of the cases we try to round trip them.

Q. After this operator returns here—when do you expect him back, tomorrow or should he be back tonight?

A. Well, as a rule it is an overnight run and the chances are, if his equipment was properly handled and unloaded and so on, he will no doubt be on his way back or come in tomorrow or be in today.

Q. After they have finished this roundtrip will you have any more use for those particular operators?

A. Well, that is hard to say. You mean immediately?

Q. Immediate use.

A. That is hard to say. It may develop the same way over the following week, the next week. In other words, it is a condition that is brought about due to congestion. It might be the following week we could use them. They may not be available the following week.

Q. So that on these operators that you use to take care of the congestion, the most you will use them in any given week is approximately two days, that is, even if you have a [fol. 2322] return load for them?

A. That is right, it would, or possibly three.

Q. What do they do with their vehicles during the remainder of the week?

A. Well, sir, I don't know that.

Q. Now, this 15 cents a mile that you pay for the use of the combined unit, is that paid on a one-way basis or do you give them 15 cents a mile for the roundtrip distance?

A. If he is hired on a round trip he will be paid 15 cents a mile on the round trip. If he is hired on the one way, he will be paid for the one-way trip.

Q. In other words, if you hire him to go from here to Louisville, for example, and you have no load for him and he has no other load and comes back empty his compensation is 15 cents for the one-way distance, is that correct?

A. If he is hired on a round trip he may not bring back a full load or bring back a part load. We will pay him for his basis of the lease. If it is 15 cents a mile for the round trip he will be paid 15 cents a mile for the round trip. If it is made for 15 cents a mile for just one trip that is all he will get.

Q. If he has to return empty that is his responsibility, if you have just hired him for the one-way trip, is that not correct?

A. That is right.

[fol. 2323] Q. Now, in this amount that you pay to the trip-lease operator for the use of his equipment, don't you consider that there is some element of profit that he earns by reason of owning this piece of equipment and that there is some element taking into consideration the investment that he has in the equipment?

A. Yes, there is. It has to be a mutual arrangement whereby the man makes a profit.

Q. So that when you are using his equipment you are paying him a profit for it?

A. That is right.

Q. And when you are using your own equipment you are

paying the actual operating costs including the investment that you have in it?

A. That is right.

Q. Now, when these peaks occur in traffic situations at St. Louis and other points on your line, I believe you testified in response to a question from Mr. Diehl that your competing carriers are experiencing about the same peak in business. Was that your testimony?

A. That is right.

Q. Do these carriers with whom you compete also attempt to employ the itinerant carrier when they have a peak?

A. I think in some cases. In some cases.

Q. So that you and your competitors who follow this [fol. 2324] practice are all competing for the itinerant trucks that are available as of the time of that peak, isn't that correct?

A. That is right.

Q. I believe on direct examination you testified that you require a doctor's certificate from all of your employees, both those who operate vehicles which you own and those that operate vehicles that are under a long-term lease; is that correct?

A. That is right.

Q. And do you also require that of the driver who is working for you on a trip-lease basis?

A. Well, we ask for their certificates. Very few of them have been able to produce them.

Q. You employ those drivers even though they don't produce the certificate?

A. We haven't been able to get the drivers to produce doctors' certificates. That is owner operators. In some cases we have and in other cases we haven't.

Exam. Lawton: Have what, employed them or not employed them?

A. No, to produce doctor's certificate on the one trip.

Exam. Lawton: The question was whether you employed them if they couldn't produce it.

By Mr. Todd:

Q. Yes. When they are unable to produce the doctor's certificate do you send them then to a doctor to be examined?

A. Sometimes we do and in other cases we don't.

[fol. 2325] Q. What percentage of the time do you just go ahead and employ them rather than send them for a certificate?

A. Well, it's very, very seldom. I say it's very seldom. We may have an occasion where a man who we think in our opinion would be a man that could work for us on a given term lease and find out that after screening him, and so on, and even after passing his physical that we wouldn't take him in, that is in the employ of the company.

Q. I know, but getting back to the situation where one of these itinerant truckers is ready to take a load for you when you ask him for a doctor's certificate and he says, "Well, I don't have one." Do you employ him or do you turn him down because he doesn't have the certificate?

A. Sometimes we employ him and sometimes we turn him down.

Q. Now, then, with respect to the men who are your regular employees, do you keep on file in your office their doctors' certificates?

A. Yes, we do.

Q. With respect to the drivers that you employ on a trip-lease basis, do you keep those certificates in your files?

A. No, we can't as a rule when those trip-lease men have their certificates they will not permit you to have that. They will carry that with them.

Q. When you are using one of these trip-lease operators and you desire to find out whether he has worked the per-

[fol. 2326] mitted number of hours or not in any given week or any given date, what kind of a check do you make to make that determination?

A. Well, he has his logs. A log book will give you approximately 45 days of the driver's log in operation, time off and time on. Time off duty and time on duty, and in verification of the log it will give us the information needed.

Q. Do you investigate the log of each man and go back as many as 45 days to make that determination?

A. No, we don't go back as many as 45 days but we do go back probably a week or possibly two.

Q. When you employ him does he furnish you a copy of the log for the period of time that he is in your employment?

A. That is right. He has to furnish us a copy of the log.

Q. But does he furnish you copies of the logs for the period preceding when he went into your employment?

A. He don't furnish us the copies. We have the right to investigate——

Q. But you don't keep that in your file?

A. No.

Q. I see.

A. We have no right to have that.

Q. In your particular operation, Mr. Burke, do you use the itinerant trucker on a trip-lease basis for the purpose of balancing the movement of your traffic or eliminating the empty mileage of your own equipment?

[fol. 2327] A. No, no, we don't.

Mr. Todd: That is all.

Exam. Lawton: We will take a five-minute recess.

(Whereupon, a five-minute recess was taken.)

Exam. Lawton: Is there an additional appearance to be entered?

Mr. Knetzger: If you please, Mr. Examiner. Austin C. Knetzger, 628 Buder Building, appearing for the Association of Team and Truck Owners.

Exam. Lawton: All right. Are you ready to resume cross-examination?

Mr. Woll: I am.

Q. You stated on direct examination that eight carriers have indicated they would like the continuation of the trip leasing and would you tell me whether these eight carriers are in some form of an association or not or part of an association?

A. Just what do you mean by a form of association? They are all common carriers, common carrier motor truck companies.

Q. Are they associated together in some organization of some kind?

A. Nothing other than the motor carriers council in St. Louis.

Q. Well, how did these eight carriers contact you to indicate to you their desire?

A. They contacted me here.

Q. Individually?

[fol. 2328] A. Individually.

Q. Or as a result of a meeting?

A. We have had several meetings. There have been meetings previous to this hearing.

Q. Were the meetings only with the eight carriers or other carriers?

A. There were other carriers.

Q. Were the eight carriers and the other carriers in some form of an association?

A. Yes, they all have various associations.

Q. In one single association of some kind?

A. No, we have no one single association.

Q. How did the eight carriers happen to get together with you at these meetings?

Mr. LaTrouette: If your Honor please, in my opening statement I said that this matter was discussed at meetings in St. Louis and attended by a group of carriers and I mentioned the various views that came out of that meeting, and that is the result now of the testimony that is going in here. We will have both sides of this question discussed by the witnesses. It is not a matter of any organization expressing any opinion; it is a matter of the individual carriers coming in and describing their practices and telling the Commission how these proposed rules will affect them.

Exam. Lawton: I think that is clear and this man is speaking for the eight other carriers besides himself.

By Mr. Woll:

[fol. 2329] Q. Who initiated the meetings between these carriers, what individual or individuals?

A. Well, the Motor Freight Council here in St. Louis had called this matter to our attention and the carriers who belong to the association attended as a group.

Q. Then all of the carriers of that association did attend the meetings?

A. Not all the carriers of the association but the carriers that were there and available and the carriers that signified their willingness to a certain stand.

Q. How many carriers were at that meeting?

A. I wouldn't be able to state that—there was 50 or 60.

Q. Would you be able to state there was 40?

A. No, I didn't check the register.

Q. Thirty?

A. I wouldn't be in a position to answer that question.

Q. Twenty-five?

Mr. LaTrouette: I object to counsel pursuing that. The witness said he doesn't know the number.

By Mr. Woll:

Q. You were present in a room with a number of carriers?

Mr. LaTourette: The witness said he didn't count them, didn't check them and didn't verify it. That should be adequate.

Exam. Lawton: I think you have followed that far enough. [fol. 2330] Mr. Woll: I would like to find out the total number of carriers there. We know that eight have expressed a view. I would like to know how many carriers were there who did not express a view or who expressed a view contrary to the eight carriers.

Exam. Lawton: Can you answer that?

A. I think the next witness will be able to divulge the number of carriers who have showed some willingness to dispose of the trip leases in its entirety and this witness will represent a certain number of carriers.

Exam. Lawton: The same as you do?

A. The same as I do.

Mr. Woll: We still leave an element out. We have the number who favor a continuation of the trip leasing; we no doubt will get an idea as to the number who do not favor them, but we don't have the number that may be indifferent.

Mr. LaTourette: If your Honor please, if carriers are not interested enough to come in here and tell the Commission what they think about this proceeding, we can't

help that. I don't think we should be put to the burden of saying who did or did not express sufficient interest to come in. We don't know. There may have been varying influences that dictated their inability to be here.

Exam. Lawton; The Commission's order was served on all of them and they have had an opportunity to express their views.

Mr. LaTourette: I object to continuation of this line of [fol. 2331] cross-examination.

Mr. Woll: May I have a ruling on that?

Exam. Lawton: I think you have gone as far as you can go with it, Mr. Woll.

Mr. Woll: Except one thing, and that is the number of carriers who were present at the meeting.

Exam. Lawton: I will ask Mr. Burke if he can state the number that were at the meeting.

A. Mr. Examiner, there are some 150 carriers that attended the meeting and they are divided in their opinion as to whether or not they want to continue the trip lease and those who were a little undecided as to what ill effects it will have and a committee in a group was formed and five men were put on one committee and five put on another committee, and it was up to the carriers to signify their willingness either to go along or not to go along, and some of the carriers decided that they didn't know what stand to take.

Exam. Lawton: You didn't count noses to see how many were at the meeting?

A. I didn't count the number of carriers that were at the meeting.

By Mr. Woll:

Q. What is the total membership of the Council?

A. All the common carrier motor carriers here in St. Louis—I would say approximately 150 to 165 carriers.

Q. Are you a member of the Team and Truck Owners Association?

A. No, I am not.

[fol. 2332] Q. Do you know the membership of that Association?

A. No, sir, I don't.

Q. Do you know whether that Association has taken any stand in this matter?

A. No, sir. I have no knowledge of their activities.

Mr. Woll: I think that will be all.

Exam. Lawton: Mr. Minor.

By Mr. Minor:

Q. Mr. Burke, I believe you testified that you had 20 vehicles under term lease?

A. That is correct.

Q. And under cross-examination did I understand you to say that those 20 vehicles were tractors?

A. That is right.

Q. Now, Mr. Burke, could you give me a breakdown of your own equipment and these term-lease equipment so far as road haul tractors are concerned and road haul trailers?

A. Well, the road haul trailers are all ours. We have 50.

Q. 50 road haul trailers?

A. That is right.

Q. Can you give me the number of road haul tractors that you have in operation both long-term lease and company owned?

A. The long-term lease is 20 tractors and we have 15 tractors that are used for over-the-road purposes, company owned.

Q. That would be a total of 35 over-the-road tractors?

A. That is right.

[fol. 2333] Q. Then the emergency that you originally spoke of, is that your own local emergency accumulation on your own docks?

A. No, I wouldn't say that it is our own local emergency. I can put it this way, that it is an emergency that is brought about due to interchange of traffic with the local traffic, local traffic that is developed with the interchange traffic.

Q. Well, you spoke about accumulation over the weekend. Is that on your dock?

A. No, it isn't always on our dock. It is on our vehicles, or on the dock.

Q. Either one?

A. That is right.

Q. You call that an emergency?

A. That is right.

Q. You don't term that the same kind of emergency which existed during the war when you spoke of pooling traffic in line with your ODT regulations, is that correct?

A. No, that was a general emergency.

Q. That was a general emergency?

A. A constant emergency.

Q. You don't feel that the Commission at this time should set down any regulation to cover a war emergency?

A. Well, I can't express myself on that question, whether the Commission should or shouldn't.

Q. You are testifying in behalf of Consolidated Forwarding?

[fol. 2334] A. Yes, sir.

Q. Have you any idea how many trip leases they have had this week or at any period of time?

A. No, I haven't requested the information from them.

Q. Mr. Burke, you testified as to your method of screening both your own company drivers, your long-term lease outfits and your trip lease, did you not?

A. That is right.

Q. For example, is that screening done in St. Louis?

A. St. Louis, Kansas City and Louisville.

Q. Is the screening of a trip-lease operator done the same at Louisville as it is in St. Louis?

A. In a majority of the cases.

Q. That is by inspection of the equipment and examination as to the physical examination of the driver?

A. Yes, sir.

Q. In your opinion is the examination of a driver or the screening of a driver as thorough on a trip-lease driver as it is on your own company driver?

A. It is the same examination.

Q. The same examination?

A. Yes, it is a physical examination.

Q. I am talking about the other screening, as to his ability as a driver.

A. Oh, his reference?

[fol. 2335] Q. His reference and his qualifications.

A. To a certain extent, yes.

Q. But not as complete as it is when you hire a company driver, is that right?

A. That is right.

Q. You have approximately 80 per cent light movement out of St. Louis to Louisville compared to Louisville to St. Louis?

A. That is right.

Q. And this density then, you have an accumulation at Louisville at certain times?

A. That is right.

Q. That is traffic which you have accepted and are unable to handle out?

A. That is right.

Q. However, you don't attempt to state that all other competitive carriers from Louisville have that same accumulation, do you?

A. I wouldn't know that.

Q. Then those other carriers possibly could have handled that so-called accumulation of yours without any trouble?

Mr. LaTourette: I will object to that. The witness obviously is unqualified.

A. That is an operating condition.

Mr. LaTourette: Unqualified to testify to that,

Mr. Minor: The witness, naturally, if he is accumulating [fols. 2336-2339] freight he knows how much freight he can get out of his terminal on given days and if he is accumulating it he is causing a congestion and he has knowledge of it.

Mr. LaTourette: I move that——

Mr. Minor: There is nothing in the law which compels this carrier to accept freight when he does not have the method to transport it.

Mr. LaTourette: I move that Mr. Minor's oral argument be stricken from the record. If the Commission wanted this case orally argued I assume we will be——

A. I wouldn't know that. I think the situation is prevalent with all of them. If we have an accumulation our competition has an accumulation.

By Mr. Minor:

Q. What have you to back up that statement, Mr. Burke, that your competitors have accumulation at the same time that you have?

A. Because of operating conditions. They are all the same. They are all similar.

Q. Your competitors could certainly have more equipment than you could.

[fol. 2340] Mr. Minor: I have one more question here. Mr. Burke, do your company drivers usually use the same tractor continuously?

A. Yes, our company drivers are assigned to a tractor and that is their vehicle.

Q. That is very advantageous, is it not?

A. That is right.

Q. Now, Mr. Burke, if I am not mistaken, you testified favoring the interchange of trailers and tractors between common carriers, both?

A. That is right.

Q. And you stated that in some cases your driver would drive the tractor and in other cases you would hire the other carrier's driver?

A. That is right.

[fol. 2341] Q. That wouldn't be a good practice, would it, Mr. Burke, for example, Company A brings in an outfit here and you lease that tractor and trailer, it wouldn't be advantageous for you to put your own driver on that tractor, would it?

A. That is a matter of opinion and company operation, whether it would be advantageous or disadvantageous. That is just an operating and purely an operating condition. There is a lot of other things that enter into that as a company may operate with complete error and although they have traffic that they can't transfer and they want to get it through and have to get it through and by leasing the entire vehicle it is possible to dispatch that unit through to destination under the original seal.

Q. Isn't it the practice of most of the carriers to have both kinds of tractors?

A. There is occasions some of the carriers have that sort, some of the carriers don't have it.

Q. You will state it is more advantageous for an over-the-road driver to use this same tractor continuously?

A. Yes, it is.

Q. It is economical from a maintenance standpoint?

A. That is right.

Mr. Minor: That is all; thank you.

Exam. Lawton: Anyone else have any questions?

By Mr. Keas:

Q. I am speaking for the St. Louis-East Side Traffic [fol. 2342] Conference which is an organization of industry in this district. The first thing, you spoke for a certain number of trucking companies which you named. Have you knowledge as to the proportion of leased vehicles of those companies?

A. No, I don't.

Q. Any of them?

A. No, I don't.

Q. How long have you been in the trucking business in St. Louis?

A. Nineteen years.

Q. Do you have a general knowledge of the methods of operation of other trucking companies?

A. To some extent.

Q. But you don't know whether they lease trucks or own them?

A. I do know that they have both types of operation.

Q. Is the proportion of leased trucks of your company very small in relation to the general average?

A. Yes.

Q. Now——

Mr. Diehl: Mr. Examiner, I didn't hear that question and answer. At least, I didn't understand it.

(Reporter read the last question and answer.)

By Mr. Diehl:

Q. General average of what? This isn't my witness but I am interested in his testimony.

Mr. Keas: Of the operating companies in this area.

Mr. Diehl: You mean comparing his company with other [fol. 2343] companies here?

Mr. Keas: With the field, with the total.

Q. Now, in case the rules were such that a proper screening of the driver and inspection of the vehicle was required of the leasing carrier, is there any reason why there would be more hazard by an owner operated driven vehicle than a company operated vehicle?

A. I don't think so.

Q. In fact, in your judgment, would an owner operator owning an $18,000 piece of equipment be more careful as to its operation from the standpoint of accidents or injuries to it than a company employee?

A. Well, in my opinion an owner operator that has a vehicle that is valued at $18,000 naturally would preserve that investment and do all he could to keep it in good operating condition.

Exam. Lawton: Also try to make all the money he could with it too, wouldn't he?

A. Yes, sure.

By Mr. Keas:

Q. The employee of the company wouldn't be out a cent if he damaged the vehicle, would he?

A. That is——

Mr. Woll: I am going to object to this question. I don't know whether this witness is qualified to speak for the entire industry.

Mr. Keas: I am confining it to his company.

[fol. 2344] A. That is a technicality, with our company, we do carry the fire, theft and collision and we do place these vehicles on our insurance policy, in fact, they are covered——

Exam. Lawton: You mean the leased vehicles?

A. That is right. Now the nature of the accident would determine whether or not our insurance company or what insurance company would pay for the damage to the equipment.

By Mr. Keas:

Q. I am not speaking of that. I am speaking of the question of the possible hazard on the road and the question of whether you deduct or charge your driver anything if he has an accident.

A. Oh, yes, you have chargeable accidents and unchargeable accidents.

Mr. LaTourette: Just a minute. I think Mr. Keas is referring to the assessment of a financial fine of some kind against the driver of your vehicle if that vehicle is damaged by the driver as distinguished from reporting an accident to the Interstate Commerce Commission under the Commission's safety regulation.

A. We make no charge to the drivers for any accidents that might involve our equipment or his own equipment.

By Mr. Keas:

Q. Under any circumstances?

A. Under either circumstance.

Q. Is it your opinion that if trip leases were eliminated entirely it would result in an increase of empty truck mile-[fol. 2345] age on the road?

A. Yes, that is definite.

Mr. Keas: That is all.

Exam. Lawton: Is there anything else?

Mr. Todd: I have a question, Mr. Examiner, brought up by reason of the last question that was asked there.

Mr. Woll: I would like to ask a few questions in relation to that also.

Exam. Lawton: All right, Mr. Todd.

By Mr. Todd:

Q. Mr. Burke, where you have an unbalanced movement, say between St. Louis and Louisville, isn't it a fact that if you operate your own equipment there that you then have to bring it back empty in some instances?

A. No—you mean if we run it over-light from St. Louis, is that what you mean?

Q. Yes. I forgot, it's the other way.

A. Well, I will answer your question in this respect: We are not carrying the maximum load capacity eastbound from St. Louis to Louisville that we are carrying west from Louisville to St. Louis or Kansas City.

Q. So that there is no empty mileage but there is light movements?

A. Yes, there is what we would term, on some occasions we have what we would term empties.

Q. That is brought about by reason of the fact that the traffic is not balanced?

[fol. 2346] A. That is right.

Q. If you use a trip-lease operator and he takes the full load for you from Louisville to St. Louis and gets here and there is no traffic going back, doesn't he have to return empty just the same as you would with your truck?

A. Not necessarily. He may not go back to Louisville.

Q. He may take a trip somewhere else?

A. He may take a trip lease to some other point.

Q. Well, now out of St. Louis, for example, to Chicago you have the same situation, don't you?

A. To a certain extent.

Q. It is not as great?

A. There are certain days there is demands for the equipment and other days there is not and your emergency causes that, the tieup of equipment.

Q. When the trip-lease operator leaves St. Louis and goes to a different point he then is not going to be available as soon in Louisville for another return load as if he returned immediately empty?

Mr. LaTourette: Isn't the answer obvious? If he is going to Chicago or Kansas City he is not going to get back to Louisville as soon as if he had gone immediately to Louisville.

Mr. Keas: And if he goes to Indianapolis——

Mr. Todd: Mr. Keas, if you would like to testify——

Mr. Turney: Mr. Examiner, you announced a rule at the [fol. 2347] beginning of this session that you were going to confine it to one lap around on this thing. Mr. Todd said he had one question.

Exam. Lawton: Can you answer that question?

A. I don't believe I know what the question was. What was that question?

Exam. Lawton: Read the question.

(Reporter read the last question.)

A. The answer is no, the man wouldn't get back as soon.

Mr. Todd: That is all, thank you.

Mr. Eldred: One question here. He stated that it would increase the empty mileage without trip leases. Now, Mr. Burke, the traffic has to move between these points, the total traffic, does it not?

A. That is correct.

Q. And how would it increase the empty mileage?

A. Well, unless the carriers who are operating into the territory as given here can increase their back-haul tonnage there isn't any way of overcoming the empty mileage because you have a tonnage figure which with some companies may reflect the figures that I gave you and with other companies reflect different figures.

Q. That is true no matter who hauls it, that is the situation?

A. That is right.

[fol. 2348] Q. And whether the owner operator hauls it or whether the companies with their own trucks haul it the empty mileage is going to be the same because of the unbalanced traffic?

A. That is right.

Mr. Eldred: Thank you, sir.

Mr. Turney: Isn't it true that the inbound and outbound relationship at a given city is different in different directions?

A. That is right.

Q. And your point was as I understood it that the trip-lease operator who comes on the heavy side, inbound, can find another trip in another direction on the heavy side outbound?

A. That is right.

By Mr. Woll:

Q. How do you know that? That is conjectural, isn't it?

A. It is an operating condition.

Q. I say it is a conjectural thing on your part; you don't know that as a fact?

A. Well, it is being done every day. It is something that is happening every day. I know it is happening.

Q. Do you know that an owner operator is a person who brings back certain things to the point of destination or to the point of starting?

A. Yes.

Q. How do you know that?

A. Because of our contacts with them.

[fol. 2349] Q. You mean contacts with those who drive for your company?

A. Well, the men who were available on trip lease.

Mr. Woll: That is all.

Mr. Diehl: I have one question, please.

Q. Mr. Witness, if all leasing were prohibited and you had to use all company owned equipment might it slow your traffic and service to your customers down to the point where even the railroads might get some of the traffic back? If you were required to own all the equipment you used would it slow your service down to your customers to a point where even the railroads might get some of the traffic?

Exam. Lawton: I think that has already been asked and answered, not only the railroads, but other forms of transportation.

Mr. Diehl: If that is his answer, I am through.

Mr. Eldred: He has already answered it three times. He said he didn't know.

Exam. Lawton: Do you have anything on redirect, Mr. LaTourette?

Mr. Jessup: I have a few questions.

By Mr. Jessup:

Q. Mr. Burke, do you use a truck or trip manifest?

A. Yes, we do.

Q. On both the lease and——

A. On a long-term lease or the trip lease.

Q. Yes.

A. We use it on both.

Q. Both?

[fol. 2350] A. Yes.

Q. I believe you testified that you inspect the equipment on the trip-leases?

A. That is right.

Q. Your lease is in writing?

A. That is right.

Q. You have the exclusive use of the vehicle during the period of the lease?

A. That is right.

Q. And you use truck manifest. If the Commission should establish rules permitting trip leasing embodying such conditions would it work any hardship on your method of operation?

A. No, I don't think so.

Mr. Jessup: That is all.

Redirect examination

By Mr. LaTourette:

Q. Referring to the term lease, will you tell us, if you haven't already told us, whether there is a minimum guarantee as to compensation which you make to the lessor of the vehicle?

A. That is right. On the term lease it provides for a minimum compensation where your trip lease is a little higher compensation than you have with your term lease men.

Q. But with no minimum guarantee?

A. On the trip lease.

Q. Over any extended period, naturally, in the trip lease?

[fol. 2351] A. That is right.

Q. If you had to convert your trip leases into the type of lease that you use for so-called permanent leases, what would be the situation?

A. Well, it would be more economical from the company's standpoint.

Q. What would be more economical?

A. Operating of the term lease in preference to the trip lease.

Q. I have in mind now that you have a certain number of trip leases.

A. That is right.

Q. Where you have no minimum guarantee extending over a period of 90 days that you have in the term lease.

A. That is right.

Q. If you had to convert those trip leases into the so-called term lease over an extended period, what would the situation be?

A. The situation would be one that would resolve itself along the utilization of the equipment and in the event you couldn't utilize that equipment it would cost you more money.

Q. With respect to the leasing of vehicles as between authorized carriers, Mr. Diehl asked you whether or not the peak was present at particular times as to all carriers operating between given points and I believe that you answered that in the affirmative. Would the fact that two parties are operating between two common points under their certificate in any manner in your opinion affect the willingness of one authorized carrier to a vehicle to another [fol. 2352] authorized carrier in competition?

A. Well, I can explain it this way, that if you were depending on a common carrier to supply you the additional equipment under the pool that he would be reluctant to supply the equipment and especially to supply the equipment when needed because of his inability to cope with the situation, and it is unknown to him, and naturally the equipment would be of no use to the carrier who is seeking it unless he could get that equipment with a certain amount of assurance that he could take care of the traffic offered to him.

Q. Assuming that you called an authorized carrier at nine o'clock in the morning and said that you needed a tractor and trailer or either one of those units to make a haul. Would the carrier be in a position to at nine o'clock in the morning say, "Yes, you may have it?"

A. I don't think so. I think that carrier would protect his own interests.

Q. In what manner?

A. By preserving that equipment for his own use and tell you if he can he might be able to give you a trailer later on in the afternoon, at which time it wouldn't be suitable for loading.

Q. With respect to freight that is at destination and which the consignee is not ready to accept for any reason at the time of its arrival. Is there any tariff provision affecting that situation?

[fol. 2353] A. Yes, we do. We have a tariff provision which calls for storage after 48 hours of free time which is similar to the demurrage in rail cars.

Q. Is that provision generally carried in the bureau tariffs, Mr. Burke?

A. It is a bureau publication.

Q. Mr. LaTourette: That is all.

Exam. Lawton: If there is nothing further, you are excused.

(Witness excused.)

Mr. LaTourette: Call Mr. Dean.

L. M. Dean was sworn and testified as follows:

Direct examination

By Mr. LaTourette:

Q. State your name?

A. L. M. Dean.

Q. What is your occupation?

A. Traffic Manager, Husmann & Roper Freight Lines, St. Louis, Missouri.

Q. Mr. Dean, have you prepared a statement which you wish to read into the record at this time with respect to the interchange of equipment as proposed under Rule 3 of the Commission's order entered into in these proceedings?

A. Yes, sir.

Q. Will you proceed to read that statement?

Mr. Wheeler: Mr. Examiner, can't we have the statement. [fol. 2354] just adopted in the record?

Mr. LaTourette: If it is satisfactory.

Mr. Turney: Give us a couple of minutes to read it.

Exam. Lawton: We will take a little time off the record and read it over and see if you are willing to have it adopted without being read.

(Discussion off the record.)

Exam. Lawton: There being no objections, the testimony will be adopted in the record without being read.

(The following is the testimony of Witness L. M. Dean.)

My name is L. M. Dean. I am traffic Manager of Husmann & Roper Freight Lines, Inc., a common motor carrier, with business headquarters at 1717 N. Broadway, St. Louis, Missouri. The company by which I am employed operates between St. Louis, Missouri, on the one hand and Cincinnati, Ohio and Louisville, Kentucky on the other hand with service authorized at certain intermediate points. I will discuss in my testimony Rule 3 relating to "Interchange of Equipment" as proposed by the Commission in these proceedings. This rule was the subject of discussion by representatives of a large number of carriers operating to and from St. Louis, Missouri, at a conference called to formulate the views of those carriers respecting Rule 3 for presentation to the Commission in these proceedings. I am authorized to say that the views which I express are concurred in by the following named over-the-road common carriers:

[fol. 2355]

Name and Address	*Certificate or Docket No.*
Anderson Motor Service, Inc., St. Louis, Missouri	109095
Be-Mac Transport Company, Inc., St. Louis, Missouri	10872
Byers Transportation Company, Inc., Kansas City, Missouri	10472
Husmann & Roper Freight Lines, Inc., St. Louis, Missouri	44290

Name and Address	*Certificate of Docket No.*
Lee Transportation Company, St. Louis, Missouri	33278
Middlewest Freightways, Inc., Lessee and operator (in part) Brashear Freight Lines, Inc., St. Louis, Missouri	86876
Middlewest Freightways, Inc., Lessee and operator of Kern Inc., St. Louis, Missouri	59421
Mound City Forwarding Company, Inc., St. Louis, Missouri	13925
Nighthawk Freight Service, Inc., Chicago, Illinois	58961
Plaza Express Company, Incorporated, St. Louis, Missouri	10928
Powell Bros. Truck Lines, Inc., Springfield, Missouri	66808
Superior Forwarding Co., Inc., St. Louis, Missouri	75406
Toedebusch Transfer Inc., St. Louis, Mo.	6616
Healzer Cartage Company Inc.	

At the outset I wish to say that no objection is found to sub-paragraphs (d) (f) (g) and (h) of Rule 3.

[fol. 2356] First Paragraph—Rule 3

Serious objection is found to the first paragraph of Rule 3 reading as follows:

> "*Interchange of Equipment.* Authorized carriers may not interchange equipment, excepting that common carriers of property may by agreement, contract or lease interchange semi-trailer or full trailer equipment with other common carriers of property for the purpose of transporting through traffic under the following conditions":

It is the view of the carriers for whom I speak that the words "for the purpose of transporting through traffic" should be deleted from this paragraph. The conditions under which semi-trailers and full trailer equipment may

be interchanged between common carriers should be just as flexible as possible. A common practice followed by common carriers in the St. Louis area in interchanging trailers may be illustrated as follows:

A carrier having authority to operate between Louisville, Kentucky and St. Louis, Missouri, will load a trailer with merchandise at Louisville, Kentucky which has as its destination Kansas City, Missouri. Upon arrival at St. Louis the trailer is leased to a carrier having authority to operate between St. Louis and Kansas City, thus avoiding transfer of lading. The latter carrier at the same time will lease one of its trailers to the former carrier to replace the trailer leased in the first transaction. This enables the origin carrier to keep its trailer fleet at the proper numerical strength and at the same time afford expedited movement of traffic. [fol. 2357] Proposed Rule 3 would prohibit this practice since trailer interchange may be engaged in only "'for the purpose of transporting through traffic" and is therefore highly objectionable. The interchange arrangement just discussed has proven highly satisfactory in the St. Louis area and the common carriers should be permitted to continue the same. It should be pointed out that in all instances the trailers leased under the aforesaid arrangements are pulled by the tractor of the common carrier having operating authority between the points of its movement. A further objection to the use of the words "for the purpose of transporting through traffic" in Rule 3 may be illustrated by again referring to the case of the trailer load of merchandise with origin at Louisville, Kentucky and destination at Kansas City, Missouri. A literal interpretation of proposed Rule 3 would prohibit the St. Louis-Kansas City carrier from loading the trailer leased by it with traffic moving locally on its line for return movement from Kansas City to St. Louis. It is possible the rule was not intended to operate in this manner. In any event it should be changed to permit return of a trailer by the lessee thereof to the lessor without the necessity of transporting through traffic therein in effecting said return.

Rule 3 (a)

It is the view of the carriers for whom I speak that subparagraph (a) of Rule 3 should be deleted in its entirety. [fol. 2358] Under this rule as proposed the interchange of trailers is restricted to two-line traffic. It is not uncommon that an origin carrier is tendered traffic not susceptible to interchange and which involves a three line. One of the carriers whose views I express recently was tendered thirteen loads of such traffic by the United States Government. The transportation thereof could not be accomplished by the use of less than three carriers.

The instructions to the carrier were that the traffic be moved in through trailers, since the trailers were to be sealed by a representative of the Government at point of origin, and remain intact until arrival at destination where they were to be broken by another Government representative.

While to illustrate my point a movement of Government traffic was used, nevertheless the carriers in this area frequently transport commercial traffic requiring a three-line haul and which, because of its inherent nature, is not susceptible to transfer or interchange.

Further, under this proposed rule common carriers may not lease trailers for use in moving traffic between two points which are points authorized to be served by both parties to the lease. It frequently happens that a carrier having authority to operate between certain termini will have more tonnage to be transported between said points than can be transported in available trailer equipment. At the same time a competitor having authority to operate [fol. 2359] between the same termini may have idle equipment which could readily be leased to the former and which is very frequently done.

The proposed rule would prohibit continuation of such a practice resulting in delay to the traffic involved.

The proposed rule is economically unsound as point "A" to point "B" may have traffic to be transported to point "B". It has a scarcity of equipment at point "A" but a substantial number of units at point "B" which it desires to return to point "A". A competitor having authority to operate from and to the same points finds its equipment

situation just the reverse of that just illustrated. Economy of operation would dictate that these two carriers be permitted to arrange an interchange of equipment under these circumstances. The proposed rule will not permit such interchange. Sub-paragraph (a) of Rule 3 if prescribed by the Commission will work an undue hardship upon common carriers; will operate to impede the free movement of traffic; will *present* expedition of the movement thereof and will not promote economy in operations.

Necessarily our position with respect to sub-paragraph (a) of Rule 3 will require modification of sub-paragraph (b) of that rule which will hereafter be discussed.

Rule 3 (b)

We propose that Rule 3 (b) be modified so as to permit the subleasing of trailers as between common carriers. What we have said in our discussion of Rule 3 (a) as it [fol. 2360] affects the movement of three-line traffic has equal application here.

Rule 3 (c)

In Rule 3 (c) reference is again made to "through movement." We think it unnecessary to repeat our objections to interchange of trailers being limited to the transportation of through traffic in our discussion of the first paragraph of Rule 3. The same reasoning applies here. We suggest this rule be modified to read as follows:

"The certificates held by the carriers participating in the interchange arrangement authorize the transportation of the commodities proposed to be transported and further authorize service from and to the points where the physical interchange occurs."

Rule 3 (e)

This rule makes it as one of the conditions under which trailers may be interchanged that:

"Traffic moves on through bills of lading issued by the carrier originating the traffic which shall show the name of the carrier with which it is proposed to interchange equipment."

The above condition contemplates that in every instance trailer interchange between common carriers shall be limited to the transportation of through traffic. We have given our views on this point in our previous discussion of the "first paragraph of Rule 3" wherein we urge the deletion therefrom of the words "for the purpose of transport-[fol. 2361] ing through traffic." The same reasoning applies here. It is also required in the above condition that the "name of the carrier with which it is proposed to interchange equipment" be shown in the through bills of lading. Such a condition is not in any manner practical. At the time of departure of a shipment from point of origin it is physically impossible to determine just which connecting carrier may be in a position to effect an interchange of equipment when that shipment reaches the junction point. Frequently it is the case that Branch or Terminal managers are unfamiliar with routing policies or divisional arrangements which are subject to repeated change. Such employees are not and cannot be sufficiently familiar with the financial responsibility and stability of connecting carriers so as to enable them to assume responsibility for the selection of the interchange carrier at a particular junction point.

We submit to the Commission that the above condition in Rule 3 (e) should be deleted in its entirety.

Mr. LaTourette: If the Examiner please, the witness is tendered for cross-examination.

Exam. Lawton: Are you ready to cross-examine?

Mr. Eldred: No questions.

Mr. Nisbet: No questions.

Mr. Wheeler: No questions.

Mr. Turney: No questions.

Exam. Lawton: Does anyone have any cross-examination [fol. 2362] of this witness? The examiner hears none. You are excused, thank you.

(Witness excused.)

Exam. Lawton: Off the record.

(Discussion off the record.)

Exam. Lawton: On the record.

FRANK WALSH was sworn and testified as follows:

Direct examination

By Mr. LaTourette:

Q. State your name.

A. My name is Frank Walsh.

Q. What is your occupation?

A. I am General Traffic Manager of Plaza Express Company, Inc.

Q. Where are the headquarters of the company?

A. 1035 South 10th Street, St. Louis 4, Missouri.

Q. Have you prepared a statement, Mr. Walsh, for presentation at this hearing?

A. I have.

Q. Having to do with Rule 2 as proposed by the Commission in these proceedings?

A. I have.

Q. Will you proceed to read your statement?

A. Yes, sir. My name is Frank Walsh. I am traffic manager of Plaza Express Company, Incorporated, a common—

Mr. Diehl: Mr. Examiner, we have no objection to putting [fol. 2363] it in the record without reading it.

Mr. Todd: Mr. Examiner, I have an objection whether it is read or unread of part of it going into the record, and I will be willing to state my objection to that portion of it and have a ruling on that and then it may go into the record in any shape you want to put it in.

Exam. Lawton: All right. Let the record show that everybody I believe is agreeable except Mr. Todd to having the witness' statement copied in the record without being read. Now, will you indicate your objection, Mr. Todd?

Mr. Todd: Yes, Mr. Examiner. On the second sheet of this statement, Paragraph 2 (a), that portion of it that is indented, states that, in part, at least, the contract carrier rates are uniformly lower than common carrier rates. I know of nothing in this record that would justify such conclusion. Until there is some factual information put into the record as to the level of common carrier rates generally

and the level of contract carrier rates generally, I seriously object to this argumentative matter going in.

Mr. LaTourette: My reply to that, Mr. Examiner, is that that would be the manner in which the witness would testify on direct and if Mr. Todd wishes to cross-examine on that point, why, the witness is available for cross-examination. He makes this statement as an experienced traffic man. I could qualify him on his some thirty years of experience in [fol. 2364] traffic, both with rail and motor carriers, if that is desired before cross-examination.

Exam. Lawton: Off the record.

(Discussion off the record.)

Exam. Lawton: On the record again. Let the record show that the statement of Witness Walsh has been corrected to eliminate the statement to which Mr. Todd objected.

(The following is the testimony of Witness Frank Walsh.)

My name is Frank Walsh. I am traffic manager of Plaza Express Company, Incorporated, a common motor carrier, with business headquarters at 1035 So. Tenth Street, St. Louis, Missouri. The Company by which I am employed operates under Certificate of Public Convenience and Necessity No. MC-10928.

I will discuss in my testimony Rule 2 relating to "Augmenting Equipment" as proposed by the Commission in these proceedings. This rule was the subject of discussion by representatives of a large number of carriers operating to and from St. Louis, Missouri, at a conference called to formulate the views of those carriers respecting Rule 2 for presentation to the Commission in these proceedings. I am authorized to say that the views which I express are concurred in by the following named over-the-road carriers:

Be-Mac Transport Company, Inc., St. Louis, Missouri; Nighthawk Freight Service Inc., Chicago, Illinois; Powell Bros. Truck Lines, Inc., Springfield, Missouri; Toedebusch [fol. 2365] Transfer Inc., St. Louis, Missouri; Orscheln Bros. Inc., Moberly, Missouri; Plaza Express Company, Incorporated, St. Louis, Missouri and Hannibal & Quincy Truck Lines, Inc., Hannibal, Missouri.

It appears that Rule 2 (a) (3) would prohibit the individual trip lease as is now in general practice throughout the motor carrier industry, would provide for a lease for a fixed term and the exclusive use and complete control of vehicle during the full period of the lease.

1. The carriers for whom I speak feel that the rule as proposed by the Commission will be not only beneficial to the motor carrier industry but to the shipping public as well. The industry will be strengthened and exercise greater responsibility in that term leases to be required in the future will give greater opportunity for careful screening and investigation of drivers and more complete inspection of motor vehicles before the same are placed in operation by over-the-road motor carriers. Safety of operations will be promoted by the term lease arrangement as proposed by the Commission. The leasing of vehicles for a fixed term as contrasted with leasing for a single or round trip offers opportunity for greater control of the operations of the motor carriers generally, by placing not only the driver thereof but the vehicle itself under the safety program of the road haul common carrier.

In the St. Louis area the motor carriers generally conduct [fol. 2366] an organized program for the promotion of safety of operations and the term lease fits particularly into that program. The prohibition against leasing for round or one-way trips will serve to preserve the rate structure of the carriers and maintain relations between territories and shipping points by reason of rates being stabilized. The result will be that a compensatory return will be realized by the carriers and equal treatment accorded the shipping public which uses motor common carriers operating company owned equipment, whereas such shippers are at a disadvantage when competing with shippers which employ carriers depending solely upon the motor carrier who employs owner operators under trip lease either in whole or in part.

The trip lease method often results in the use of an owner operator by a common carrier from a particular point of origin to a particular destination at which latter point the vehicle of the owner operator is leased by a contract carrier for a return movement to the home base of

the owner operator. The contract carrier so leasing the vehicle and having no investment therein would have a competitive advantage over the common carrier operating between the same points and thus common carriers, by use of the trip lease in their own operations, are building up competition for themselves on the part of contract carriers.

The same conditions would exist in the case of a private [fol. 2367] carrier transporting its own property from its home base to a given destination and upon arrival at the latter point, leasing its vehicle on a trip-lease basis to a common carrier for movement back to the home base of the shipper. If the shipper were required to return its vehicle empty to its home base it is my judgment that the vehicle would not have been moved in the first instance by the private carrier for the transportation of its own property since it would be uneconomical for the shipper so to do. The result is that the common carrier has been deprived of transporting tonnage he may otherwise have hauled were it not for the trip lease entered into by the private carrier and the common carrier for the purpose of returning the shipper's vehicle to its home base.

2. In conclusion the elimination of the individual trip lease of what is commonly called owner operators, and the requirement that such vehicles be operated under a term lease would correct many of the ills now existing.

The following among others are the results of present practices of trip leasing:

a. Aids contract carriers in making it possible for them to trip lease for return to home base, equipment previously leased by the common carrier.

b. Makes possible leasing of equipment by owner operators to shippers for movement of traffic to home base of owner operator.

[fol. 2368] The result is that the common carrier is deprived of traffic it would ordinarily transport from point to which it leases owner operator to the latter's base operation.

c. In case of shipper owning its own equipment, it may transport commodities owned by it in its own vehicle while from place of business to point of sale or destination and lease said vehicles to common or contract carriers for

transportation of traffic for return movement to the point at which shipper's place of business is located.

This *effects* both common and contract carriers in the following manner:

If shipper did not have opportunity to lease its vehicles for return movement to place of business, it would not be economical in the first instance to engage in original movement since operating costs would be much higher, having in mind empty return movement of the vehicles.

d. Movement of exempt commodities:

Motor carriers have had little opportunity to transport exempt commodities for the reason that these commodities are transported by owner operators at depressed rates from point of origin to destination, at which latter point the equipment is leased by either common or contract carriers for return movement.

e. Lumber and livestock:

Practically all of the lumber and livestock moving into [fol. 2369] St. Louis is transported either by owner operators who lease vehicles to shippers or in the shipper's own vehicles. At St. Louis these vehicles are leased by common or contract carriers for the transportation of commodities to owner operator's origin base or location of shipper's place of business. The same situation applies to the movement of beer, groceries and many other commodities.

f. Steel:

A steel company in St. Louis transports steel from St. Louis to points in approximately twelve states, in vehicles, in some instances, some leased for individual trip and in some for a term. These vehicles are leased to both common and contract carriers for the transportation of varied commodities on return movement.

Mr. LaTourette: The witness is tendered for cross-examination.

Exam. Lawton: Are you prepared to cross-examine or do you want some time to study it over?

Mr. Idol: I have two short questions.

Cross Examination

By Mr. Idol:

Q. On the first page you make a reference to a comparison of safety of operations between trip lease and company owned equipment.

A. That is right, yes, sir.

Q. Was any study made as the basis for that statement?

A. No particular test or time study was taken other than experience with——

[fol. 2370] Q. That is all I wanted, just whether you had a study, Mr. Walsh. Then on the second page, the statement is made that shippers are at a disadvantage when competing with shippers which employ carriers depending solely upon the motor carrier who employs owner operators under trip lease either in whole or in part. Aren't shippers able to select either type of carrier that they would like to have?

A. Yes, sir, they do that. They have the choice.

Mr. Idol: That is all I have, thank you.

Exam. Lawton: Anyone else prepared to cross-examine?

Mr. Keas: I would like to ask one question.

Q. Have you any record of the—any accident record relationship between trip lease operations and private carrier operations with their own drivers?

A. No, sir, I have no accident record.

Q. You don't know how they compare?

A. No, not at this setting I don't have any figures on it.

Mr. Keas: That is all.

Exam. Lawton: Anyone else?

By Mr. Diehl:

Q. Does your company employ trip lease operators?

A. Yes, sir.

Q. Are the level of rates of your company on a comparable level with other carriers operating in this territory?

A. Generally speaking, yes, sir.

Mr. Diehl: That is all I have.

[fol. 2371] By Mr. Wheeler:

Q. Mr. Walsh, are you familiar with the investment that owner operators have in their equipment? I have reference here to the fact that a statement was made earlier that an owner operator—owner operators had $18,000 invested in their equipment.

A. I heard that statement, yes, sir.

Q. Do you know whether or not that statement is correct?

Mr. Keas: I don't want to intrude but that wasn't the statement. That was only a figure——

Exam. Lawton: He said assuming they had that much. He just said assuming they have that much. I don't think that he said that they do pay that much.

By Mr. Wheeler:

Q. Do you know what they pay, how much of their own money they have as distinct from that which they borrow from loaning agencies, banks and others?

Mr. Idol: I object to that, Mr. Examiner. I don't think any witness could possibly answer that question.

Mr. Turney: No witness knows who all the owner drivers are.

Mr. Wheeler: I am asking him for his experience.

Exam. Lawton: Overruled. He may answer.

A. No. I don't know how much of their own money they put in nor how much they borrow but I can tell you the price of the vehicle, if you want to know that.

Mr. Wheeler: I have no further questions.

[fol. 2372] Exam. Lawton: What is the price of the vehicle?

A. They average around $5500 for the tractor and around $4,000 for the trailer. I am speaking of tandem-axle trailers, around $4,200 where you are in a position to purchase a single-axle trailers for about 60 percent of that.

Exam. Lawton: Some units would run higher, depending on size, I suppose, power?

A. Depending on the horsepower and the size of the equipment; the type of the vehicle.

Exam. Lawton: Anyone else?

By Mr. Wheeler:

Q. May I ask now whether or not you have any information with respect to the investment of owner operators in equipment which you have leased from them on a trip basis?

A. I haven't seen their balance sheets or their—investigated their net worth, no, sir.

Q. I asked you if you had any information as to what their personal investment in such equipment was.

A. Yes, by general knowledge I do, yes.

Q. What is that?

Mr. Turney: What is the nature of that general knowledge? I object if there is no more qualification than that. He said he didn't know what their own investment was.

Mr. Eldred: He said he hadn't seen the balance sheet.

Mr. Turney: He said he didn't know how much they put in it, how much they borrowed or what not.

[fol. 2373] Mr. LaTourette: As counsel may I say something now to protect this witness? I don't believe the witness understands just what the question means.

A. I frankly don't. I am puzzled.

Mr. LaTourette: As I understood counsel's question it was that he is asking him now if he knows how much money owner operators have invested in equipment.

A. You mean all the owner operators in the United States or any particular one?

By Mr. Wheeler:

Q. Those with whom you have had experience.

Mr. LaTourette: You mean his company has had experience?

Mr. Wheeler: Certainly.

Exam. Lawton: You mean one owner operator in one unit?

Mr. Wheeler: No, no, those with whom he has had trip leases, he or his company has entered into trip leases.

Mr. LaTourette: I think the basis would have to be laid before that question could be answered. The witness would certainly have to be shown to have made an investigation and to be qualified to answer the question.

Exam. Lawton: I think we are going pretty far afield on that. I don't see the purpose.

Mr. Wheeler: There was an assumption on the record that stands in the record now that owner operators have tremendous investments in their equipment and for that reason they take excellent care of them and the people who [fol. 2374] don't have any investment don't take care of them and that there are no penalties enforced against drivers of equipment which is owned by employers rather than by the owner operator themselves. I would like an opportunity to correct that impression. I think it is erroneous.

Mr. Turney: I suggest that Mr. Wheeler get a qualified witness to do that before he starts to do that.

Exam. Lawton: If you can qualify this witness, go ahead. I don't believe you can.

By Mr. Wheeler:

Q. Do you know of any owner operator that has $18,000 invested in a tractor and a trailer?

A. No, sir, I don't, don't know of any of them that have that much. I would like to qualify my answer to that. I don't want to give you a straight yes or no answer.

Q. Please give your explanation.

A. Well, some of the operators that we employ on a trip-lease basis the same as the general practice is in this territory and he will call at our dispatcher's office and we will hire him, and comparing it with our own equipment, we know good and well that it doesn't cost that much. If it happens to be a Trailmobile we know the value of a Trailmobile trailer. If it happens to be a Freuhauf we know the value of a Freuhauf, but generally speaking the owner operator owns only one tractor and trailer. I say generally speaking. Now, in that investment in that particular tractor-[fol. 2375] trailer he may have it paid for and he may not have it paid for. He may be buying it on time.

Exam. Lawton: You never ask him the extent to which he has paid for it?

A. Certainly not. We are only interested in the condition of the vehicle as to whether it is in good condition or whether a driver is physically fit or what have you.

By Mr. Wheeler:

Q. Well, assume that you have a driver who—I assume you take disciplinary action against drivers that are careless, is that correct?

A. Oh, yes, sir.

Q. That are in your employ?

A. When they are in our employ, yes, sir.

Mr. Wheeler: I have no further questions.

By Mr. Woll:

Q. Have you had occasion over a period of years to see equipment utilized by owner operators?

A. Yes, sir, lots of it.

Q. And in the whole how does that equipment compare insofar as safety with equipment used by your company?

Mr. Turney: May I ask for a meaning of that question? What does the question mean? Qualify it insofar as safety is concerned.

By Mr. Woll:

Q. The condition of the vehicle itself, the equipment itself.

[fol. 2376] A. From my observation with respect to pri-

[fol. 2377] vately owned equipment, what we call owner operators, they are generally not in the mechanical condition that a carrier who maintains a fleet and a mechanical department for the purpose of keeping his fleet in good condition. Now, we inspect our proposed lessor operators and if they are not mechanically fit, the driver isn't what we think would be capable of meeting the ICC requirements, why, then we reject it, but in my own observation, I have seen some rigs that, on the street, that we certainly wouldn't hire or even entrust any freight to, although they are in the employ of some carrier, whether it's a contract, private or other common carrier.

By Mr. Woll:

Q. Now, in the course of your business have you had occasion to work on equipment putting them in mechanical condition and good mechanical condition?

A. Individual experience?

Q. Yes.

A. As a mechanic?

Q. Yes.

A. No, I am not a mechanic.

Q. Have you had the supervisory authority over people who did mechanical work on equipment?

A. Not directly but indirectly.

Q. Do you think in your opinion that you are a judge as to whether or not equipment in a given instance may be equipment which would be safe on a highway?

[fol. 2378] A. Oh, yes.

Exam. Lawton: Let me ask you, does your company maintain a service department?

A. Oh, yes, we have a mechanical department.

Q. Exam. Lawton: Do you service your own equipment?

A. Yes, sir, the company owned equipment we service and maintain.

Exam. Lawton: You don't the leased equipment?

A. Not the leased equipment. We only inspect it as to its mechanical operation.

Mr. Diehl: Do you do the inspecting?

A. Not personally, no, sir.

Mr. Diehl: Well, then, I submit he can't answer these questions and I would move they be stricken. He doesn't know anything about the mechanical condition of the units.

By Mr. Woll:

Q. Do you know anything about it?

A. Yes, I know about it.

Q. All right. There is your answer.

Mr. Diehl: How does he know about it? I want to hear before he goes any further. Qualify him.

By Mr. Woll:

Q. How do you know about it?

A. Because I am present very often at the inspection of the equipment by our qualified mechanics.

Q. Have you talked to mechanics?

A. Oh, yes, lots of times.

Q. Have you gathered knowledge from them as to what [fol. 2379] may or may not be a good condition insofar as safety is concerned?

A. That is right. If they say there is a possibility of this axle breaking, we won't take it.

Mr. Diehl: What was that?

(Reporter read the last answer.)

Exam. Lawton: The mechanics tell you that?

A. That is right.

By Mr. Woll:

Q. Based upon your experience what is your opinion as to the percentage of automobiles or equipment that has been proferred to you over the years which you—by owner operators which you consider to be in an unsafe condition and a hazard to be utilized on the public highways?

Mr. Lieberman: I am going to object to that, if Your Honor please, on the ground it is very broad. There is no limitation as to time. He is talking about over the years. If it is limited to a specific period I would have no objection. I don't think the witness would be able——

By Mr. Woll:

Q. To the last three years.

Mr. Lieberman: I certainly would object to it for three years?

By Mr. Woll:

Q. Two years.

Mr. Turney: Mr. Examiner, this is becoming rather silly. I submit again for the same reason that has been made more apparent by counsel's questions that the equipment which is turned down, whether it be their own company equipment that is down for one reason or another or an owner [fol. 2380] driver's that is down for one reason or another

or unacceptable for interstate commerce for one reason or another is wholly beside the issues in this case. This case deals only with those that are utilized in interstate commerce and those are the ones that he found acceptable for his own company's use.

Exam. Lawton: Let's not have any more of these long speeches.

Mr. Turney: You have to for that line of testimony.

Exam. Lawton: If you will limit that to one period.

Mr. Woll: I will limit it to a period of say two years.

Mr. Lieberman: I object, if Your Honor please. The conditions which may have prevailed two years ago may not be the conditions that prevailed a year ago or of recent date. It is unfair to go back that far.

Exam. Lawton: Let's make it the last year.

A. The last year I don't know the percentage. I would say there have been at least ten or 15 drivers that have been rejected in that period.

By Mr. Woll:

Q. Out of about how many?

A. Oh, our average is about three a day, I would say, about 150.

Q. Would it be 150 separate drivers?

A. No, separate leases.

Q. But there wouldn't be that number of drivers?

Exam. Lawton: When you say driver, you mean owner driver?

A. Owner driver, yes, sir.

[fol. 2381] By Mr. Woll:

Q. Ten out of about how many owner drivers?

A. There wouldn't be over 20 or 25 I guess.

Q. In other words, you have rejected ten owner drivers out of about a combined total of 35?

A. About that, yes, sir.

Q. All right. Have you had the past year occasion to talk to owner operators relative to the rest that they get and their observance of the laws concerning rest periods?

Mr. Diehl: Confine it, please.

By Mr. Woll:

Q. The last year, your personal knowledge, conversations with owner operators.

A. Just on one or two occasions I have talked with them and I have understood from their own personal conversations that they have pulled up along the side of the highway and taken a nap for themselves. Beyond that I——

Q. Was that because of the fact that they hadn't had a long period of rest before they took this new operation in hand?

Mr. Diehl: Or did they tell you any reason for it?

A. They didn't tell me any reason.

Mr. Diehl: Then if they didn't tell you the reason you can't answer that question. I object.

Mr. Eldred: Let the witness answer the question, please.

A. The reason is obvious. He will bring in possibly a load of livestock in the morning and deliver it to the stockyards that day and then load out the same day back to the south [fol. 2382] or west or north or wherever he happens to be going.

Mr. Diehl: I object and move that answer be stricken. He said they didn't tell him why. Obviously he can't answer the question, give the reason if they didn't tell him.

Exam. Lawton: You are just guessing at the reason.

Mr. Diehl: Of course he is. I move it be stricken.

Exam. Lawton: Let's not have any more guesses, please.

A. Well, I would say that the guess is more or less based on observation, Mr. Examiner.

By Mr. Woll:

Q. What do you mean by that, Mr. Witness?

A. Well, for example, one owner operator has a regular livestock haul from points in Arkansas to the East Side and he will drive up during the night and deliver his load over on the East Side and then shop around during the day for a load of freight to take say south to Memphis or west to Kansas City. I have personal knowledge of several carriers of that type.

Exam. Lawton: They come to your terminal, do they, to pick up a load?

A. Yes, sir, they do.

Mr. Woll: I think that is all.

By Mr. Diehl:

Q. Do you utilize those livestock haulers for some of your westbound traffic?

A. Yes, sir.

Q. And your southbound traffic?

A. Yes, sir.

[fol. 2383] Q. You make a regular practice of that?

A. Yes, sir, we do.

Q. How much of a load do those livestock haulers usually bring in, if you know?

A. I don't check the manifest on the inbound loads.

Q. Do you know whether or not the vehicle is so designed as to haul as much in poundage to St. Louis as you would send out in poundage from St. Louis?

A. If he hauls livestock he wouldn't have as much weight as he would on general freight going southbound, no, sir.

Q. Well, tell me what kind of a vehicle you are talking about now.

A. A vehicle generally known as a stock rack.

Q. Suppose you describe for my benefit a stock rack, please, sir.

A. What is known as a stock rack——

Mr. Eldred: If he can haul so much one way he can haul it the other way. I don't see the purpose of this line of questioning. It is self-evident.

Mr. Diehl: The witness and I were getting along very well, I thought, for a moment.

Exam. Lawton: All right, go ahead.

A. I might explain what a stock rack is. It is a truck with a body on it with open slats, something similar to a stock car. You have seen a railroad stock car?

Mr. Diehl: Yes. I have seen them both. I wanted the [fol. 2384] record to tell what it is.

A. Well, for clarification I wanted you to let me know that you have seen it.

Q. Yes, sir.

A. Now, a stock rack is built similar to a freight car which is constructed for the purpose of transporting livestock in. This has slats along the side of the inside of the walls, in other words the boards have opening in it so the air can go through there and so the stock can breath and naturally not suffocate.

Exam. Lawton: All right, that is enough, gentlemen.

By Mr. Diehl:

Q. What type of commodity do you ship out from St. Louis in that sort of a rig?

A. General commodities.

Q. You mean dry freight?

A. Yes, sir.

Q. And you make a practice of that?

A. Yes, sir. I might also add that these stock racks are equipped with tarpaulins for the purpose of covering the tops and the sides.

Q. Have you found it advantageous to your business in the past to use that equipment?

A. Yes, sir, for competitive reasons.

Q. Now I would like you to tell me a little bit more about your conversation with the mechanic which resulted in him telling you that he wouldn't recommend that you hire a [fol. 2385] particular unit because the axle might break. Do you recall saying something about that a few minutes ago?

A. Yes, sir, I do.

Q. Which axle was it?

A. I am awfully sorry but I can't say which axle it was.

Q. Are you capable of determining whether or not a rear axle of a power unit is about to break?

A. I am not, no, sir.

Exam. Lawton: He said he wasn't on direct.

By Mr. Diehl:

Q. You don't know whether he was talking about a front or a rear axle, do you?

A. No, sir, it was just conversation with the mechanic.

Exam. Lawton: You have to rely on your mechanic?

A. That is right, Mr. Examiner.

By Mr. Diehl:

Q. How often are your vehicles upon inspection when they are ready to leave on a trip sent back to the shop because of mechanical difficulty, if you know?

A. I don't know the number of times.

Q. Does it ever occur?

A. Oh, yes, sir, yes, sir, very frequently.

Q. What do you mean by very frequently?

A. Well, we maintain a garage for the purpose of correcting these mechanical defects and I would say about three or four trailers a day are in the garage for overhauls to correct certain mechanical defects.

[fol. 2386] Q. Have you ever employed an owner operator after first inspecting his vehicle and finding that it was mechanically unfit and then the vehicle was repaired to your satisfaction and he came back and you employed the vehicle?

A. I don't know of any particular instance, no, sir.

Q. You said something about a percentage of rejections here. How many vehicles do you reject per week of the owner operator type because of mechanical defects, if you know?

A. I don't know definitely, no, sir, how many per week. I have made no studies along that line.

Q. How many do you employ per week, if you know?

Mr. Woll: Are you talking about vehicles or operators?

Mr. Diehl: Owner operators.

Mr. Woll: You were talking about vehicles a moment ago.

Mr. Diehl: I said owner operators' vehicles if you will check the record. Now I am talking about the same thing.

Mr. Woll: Vehicles or operators?

A. You are talking about vehicles now?

By Mr. Diehl:

Q. I am talking about the owner operators presenting themselves to you and you hiring them. How many do you employ a week, if you know?

A. I might qualify it, if I may.

Q. If you can give me an approximation or a definite answer I want it and if you can't tell me just say you can't.

A. Yes, I can tell you but I have to qualify it. We will [fol. 2387] average about 18 a week and of those 18 they are owned by eight or nine operators. We have one operator who is domiciled in Paragould, Arkansas. He owns three trucks.

Q. Didn't you testify on direct examination that the average owner operator owned one piece of equipment and operated it himself?

A. Yes, sir, that is right, the average.

Q. How do you reconcile it with your statement here as to what your company is doing when you tell me that you employ 18 that are owned by eight people?

Mr. Woll: That is not the average, that is all.

A. That is not the average. I said the average is——

By Mr. Diehl:

Q. When you were speaking about the average you weren't talking about your company, is that it?

A. Well, yes, I was.

Q. How do you reconcile the two statements or do you attempt to?

A. There might be two or three that will own the preponderance of the trucks, that might own more than one vehicle, whereas the other itinerant trucker will only own one.

Q. Mr. Witness, if you have ten owners that own 20 vehicles, the average can't be one, can it?

A. No.

Mr. Eldred: I think what the witness meant was——

Mr. Diehl: I can get the answer from the witness unless you are objecting.

[fol. 2388] Exam. Lawton: Never mind. Let the witness answer.

Mr. Eldred: Why all this argument?

Mr. Diehl: I want to demonstrate, if I can, that this witness is giving a lot of speculative testimony and I think

I am doing it. I want to ask you about your statement about your observation "rigs that you observed on the street."

A. That is right, sir.

Q. I believe you said you didn't know whether they were in the employ of anybody else or not so far as common carriers were concerned.

A. That is correct, sir.

Q. What connection do you make with respect to your observation of rigs on the street to the common carriers or contract carriers operating in this section of the country?

A. Well, I would say that they were potentially available to private, contract or common carriers for leased equipment.

Q. Do you know whether or not the safety regulations of the ICC go so far as to cover private vehicles?

A. Oh, yes, sir, that is the only section that the private carrier is subject to, the safety of operations.

Q. So that if those rigs were being used in private operation they would still be violating the Interstate Commerce regulations, is that right?

A. They would, yes, sir.

Q. Now, you know that those same rules apply to contract [fol. 2389] carriers, don't you?

A. That is right.

Q. So that if they were being used in contract carrier hauling they would still be violating the ICC regulations, would they not?

A. Yes, sir.

Q. Can you tell me of any of these rigs that you just spoke of in general operation that you later to your own knowledge saw in the service of any common or contract carrier?

A. Yes, sir, I have seen them.

Q. Tell me specifically about it now.

A. You want to know the name of the company?

Q. Yes, I want every detail that you can give me.

A. I would rather not name the company right now.

Q. I want you to tell me then if you say it did happen, do you know whether or not that vehicle was repaired in accordance to meet the requirements of the Interstate Commerce Commission as to safety?

A. No, sir, I can't say that.
Q. You cannot?
A. No, sir.
Q. Do you know whether or not that rig had on it the necessary equipment that is required by the ICC regulations, such as flares, et cetera?
A. I didn't inspect it, no, sir.
[fol. 2390] Q. This vehicle that you are speaking of you observed on the street, how far were you from it? Were you in it?
A. No, sir.
Q. Did you lift up the hood to look at the motor?
A. No, sir.
Q. Did you inspect the axles?
A. No, sir.
Q. The brakes?
A. No, sir.
Q. Are you speaking, then, of the general appearance of the vehicle?
A. Yes, sir.

Mr. Diehl: That is all I have.

By Mr. Turney:

Q. Have you ever employed, Mr. Witness, owner drivers or their equipment that you consider to not been in compliance with the Interstate Commerce Commission's requirements, that is, since those requirements went into effect?
A. No, sir, not knowingly, no, sir.

Mr. Turney: Thank you.

By Mr. Nisbet:

Q. The company, I take it operates company owned equipment?
A. My company, sir?
Q. Yes.
A. Yes, sir.
Q. Do you operate any equipment leased under a long-term lease?
[fol. 2391] A. Yes, sir.

Q. What is the term of the lease, generally?

A. Thirty days or greater.

Q. I didn't hear you.

A. Thirty days or greater. That is on our long-term lease tractors.

Q. Can you take some reasonable period, such as thirty days and give me an estimate of the volume of traffic which the company moved on first the company owned equipment and then on the long-term leased equipment and then the owner operator short-term leased equipment.

A. You mean an estimate as to the tonnage that they handled?

Q. Yes, what percentage moves via each form.

A. Do you want the percentage that moves by company owned equipment?

Q. That is correct.

A. Versus the long-term leased equipment?

Q. That is correct, versus the short-term owner operator equipment.

A. That would be rather difficult. I would say the preponderance of our traffic is moved by our own individually owned units. For example, we have 132 tractors and 185 trailers and out of the 132 tractors there are approximately 31 I believe that are on long-term lease and we have about 25 of the trailers on long-term leases. So on the percentages I would have to stop to compute the tonnage. Now, the ton-[fol. 2392] nage is pretty well distributed among the long-term leased equipment and their own equipment and average about 40,000,000 pounds a month. Then that could be computed.

Q. Insofar as the provisions of Rule 2 attached to the hearing order in this proceeding, have you considered all of the provisions specified in the proposed Rule 2?

A. I have read over them, yes, sir.

Q. Insofar as your company is concerned, are there any provisions or requirements there stated which you feel would be a burden to your company and its business?

A. No, sir, I don't.

Q. Was that phase discussed at the conference in connection with the carriers shown and mentioned in your direct testimony?

A. Yes, sir, it was very exhaustively discussed.

Q. Was any conclusion reached insofar as the group was concerned as to whether or not there were any burdensome requirements in Rule 2?

A. Well, the group was divided. Some thought that some of the divisions were burdensome and others thought that they were advantageous.

Q. As far as you are concerned, you don't believe there are any burdensome requirements?

A. No, sir.

Q. Does your company have occasion to lease equipment to shippers or private carriers?

[fol. 2393] A. No, sir.

Q. Do you know what the practice is insofar as other carriers named in your direct testimony is concerned?

A. No, sir, they don't lease anything, any equipment to shippers.

Q. Or private carriers?

A. Or private carriers, no, sir.

Q. You have personal knowledge of that?

A. That is right. They are all common carriers.

Mr. Nesbit: That is all.

Mr. Eldred: Just a couple of questions.

Q. As I understand it although you do practice trip leasing as a result of competitive conditions in the industry——

A. That is correct, sir.

Q. ——you desire that that practice be abolished?

A. That is right, yes, sir.

Q. Am I correct in understanding from your testimony that permitting trip leasing results in common carriers having additional competition from exempt carriers and contract carriers?

Mr. Todd: Objection, Mr. Examiner. There is nothing in his testimony to that effect.

Mr. Eldred: I asked him a question. He can answer it. I didn't say he said it.

Exam. Lawton: Are you referring to Page 2?

Mr. Eldred: I asked him if that was the import of his [fol. 2394] testimony. I didn't say he testified to that effect.

Mr. Todd: He certainly did, according to the record you said that.

Mr. LaTourette: I think it is in the statement.

A. Yes.

Mr. Eldred: He said yes. I wanted to be sure that I was correct in my assumption. Do I understand, is there more than one company in this area to your knowledge that is a private carrier which leases its equipment on back hauls to common or contract carriers?

A. More than one company?

Q. Yes.

A. Yes, sir.

Q. Is that a practice that is detrimental to both the common and contract carriers in your opinion?

A. Yes, sir, I think it is.

Q. Now, if the trip lease were prohibited in your opinion would it permit the common and contract carriers to transport some of the so-called exempt commodities?

A. Yes, sir, I think it would.

Q. Have you made any estimate, sir, as to the amount of additional capital that your company would require to handle your present traffic if trip leasing were abolished?

A. I haven't made any estimates, no, sir.

Q. Well, what is your opinion, would it be any substantial [fol. 2395] amount?

A. Well, no, sir, it wouldn't be considered as substantial, taking consideration the amount of equipment that we have.

Q. Yes. As I understand it the companies which you mentioned in your testimony are going to provide the necessary equipment either by long-term lease or by purchase if the trip lease is abolished?

A. Yes, sir.

Q. In your opinion if the trip lease is abolished would it lessen the competition that the common carriers are now receiving from contract carriers?

Mr. Todd: Objection, Mr. Examiner. That is irrelevant and immaterial to the issues in this case.

Mr. Eldred: The common carriers are the ones that actually serve the public. Contract carriers are merely